

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

PEOPLE OF THE STATE OF)
WYOMING,)
)
Plaintiff,)
)
v.)
)
PACIFICORP, an Oregon)
corporation,)
)
Defendant.)

Docket No. 173-209

FILED

JAN 29 2009

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 2008), has filed a Complaint against Defendant PacifiCorp, an Oregon corporation ("PacifiCorp"), alleging that PacifiCorp failed to comply with the particulate matter ("PM") emission limits for units 1, 3 and 4 of the Jim Bridger Plant facility ("Facility") located in Sweetwater County, Wyoming, in violation of the Act, the Wyoming Air Quality Standards and Regulations ("WAQSR") and DEQ/AQD Permit MD-1552. The DEQ/AQD and PacifiCorp (collectively referred to hereinafter as "Parties") represent, 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 the defendant to file an answer or 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 the 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. PacifiCorp is an Oregon corporation that partially owns and operates the Facility located in Sweetwater County, Wyoming.

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 Permit MD-1552.

III. Background

A. PacifiCorp

1. PacifiCorp partially owns and operates the Facility.
2. The Facility is subject to various DEQ/AQD regulatory and permit requirements including DEQ/AQD Permit MD-1552.

B. DEQ/AQD Construction and Modification Permitting Program and DEQ/AQD Permit MD-1552

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 April 9, 2007, the DEQ/AQD issued Permit MD-1552 to PacifiCorp for the Facility including Condition No. 8 which, among other things, established PM emission limits of 0.30 lb/MMBtu and 180 lbs/hr for Units 1, 3 and 4.

6. Pursuant to WYO. STAT. ANN. § 35-11-701, the DEQ/AQD issued Notice of Violation Docket No. 4239-08 ("NOV") to PacifiCorp on March 21, 2008, alleging in part that PacifiCorp violated the Act, the WAQSR, and DEQ/AQD Permit MD-1552 by failing to comply with the Facility's PM emission limits as required by Condition No. 8 of DEQ/AQD Permit MD-1552.

7. 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

Without admitting any of the facts alleged in the NOV or Complaint, and without admitting any liability or failure to comply with permit conditions, PacifiCorp agrees to the following:

A. Stipulated Civil Penalty. Within thirty (30) days after notice to PacifiCorp of entry by the Court of this Consent Decree, PacifiCorp, agrees to pay to the DEQ/AQD the sum of thirty thousand one hundred dollars and no cents (\$30,100.00) as a stipulated civil penalty ("Stipulated Civil Penalty"). 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 WY 82002.

B. Supplemental Environmental Project. In addition to paying a Stipulated Civil Penalty, PacifiCorp agrees to complete the following Supplemental Environmental Project ("SEP"):

1. A SEP is a project that is beneficial for the environment and is otherwise not required by applicable statutes, regulations, permits or orders. This SEP will benefit the environment through activities conducted by the University of Wyoming Environmental Engineering Internship Program (EEIP).

2. PacifiCorp agrees to complete the University of Wyoming Environmental Engineering Internship Program SEP ("UW SEP") by submitting a check made payable to the University of Wyoming in the amount of thirty thousand one hundred dollars and no cents (\$30,100.00) for the University of Wyoming Environmental Engineering Internship program account WYDEQ6867. PacifiCorp shall make full payment of the UW SEP within thirty (30) days after PacifiCorp has been notified by the DEQ/AQD that the final signature has been affixed to this Agreement. PacifiCorp shall submit the UW SEP payment to Christy Rickard, University of Wyoming, Department 3355, Contracts and Grants, Old Main, Laramie, Wyoming 82071. PacifiCorp shall provide evidence of the payment made to the University of Wyoming to Nancy Vehr, Sr. Assistant Attorney General, at the address noted in Section IV.A., within thirty (30) days after completing the UW SEP.

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

C. Satisfaction. Payment of the Stipulated Civil Penalty and successful completion of the UW SEP shall constitute full satisfaction of PacifiCorp'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 Civil Penalty and completion of the UW SEP as specified in Section IV of this Consent Decree shall constitute full satisfaction of the claims against PacifiCorp that DEQ/AQD alleged in the Complaint initiating this action and in the NOV.

B. In consideration of the Stipulated Civil Penalty and completion of the UW SEP as specified in Section IV of this Consent Decree, DEQ/AQD and the State of Wyoming hereby release and covenant not to sue PacifiCorp, 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 arising out of the facts, transactions, or events which were alleged in the NOV or the Complaint filed pursuant thereto.

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

D. PacifiCorp shall notify the DEQ/AQD, by providing such notice through Nancy Vehr, Sr. Assistant Attorney General, at the address noted in Section IV.A above, upon completion of its obligations specified in Section IV of this Consent Decree.

E. Within thirty (30) days after receiving PacifiCorp's notice of completion, the DEQ/AQD will request that the Court terminate this Consent Decree and dismiss this action with prejudice as to all claims which were made in this lawsuit.

F. 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 PacifiCorp, 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 PacifiCorp of its duty to comply with the Act, the WAQSR, Wyoming's SIP, the federal Clean Air Act, and any rules, regulations or 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. PacifiCorp 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, PacifiCorp 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 MD-1552, 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, PacifiCorp 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 PacifiCorp'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^d day of January, 2008 ^{9 11 0}

Spencer K. Davis
DISTRICT COURT JUDGE

cc: Nancy Vehr, Sr. Asst. Attorney General

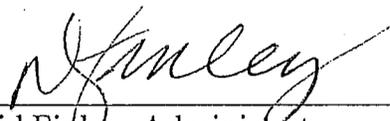
STATE OF WYOMING COUNTY OF LARAMIE, SS CHEYENNE
I, Gerrie E. Bishop, Clerk of the District Court in and for the County of Laramie, Wyoming, do hereby certify that the within and foregoing is a full true and correct copy of the original thereof as the same appears on file or of record in my office and 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 January 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: 1/2/09

By: 
David Finley, Administrator
Air Quality Division

Date: 1/6/09

By: 
John Corra, Director
Department of Environmental Quality

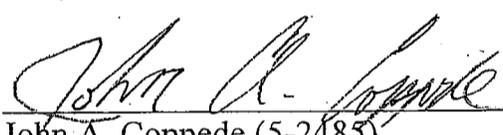
FOR PACIFICORP:

Date: 12/18/08

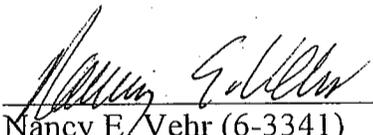
By: 
Name: Robert P. RAMBEL
Title: Managing Director
Jim BEAVER Plant.

APPROVAL AS TO FORM:

Date: 12/17/08

By: 
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(307) 634-1525
Attorney for PacifiCorp

Date: 12/3/08

By: 
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Attorney for DEQ/AQD