Keith Galle

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

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

PEOPLE OF THE STATE OF WYOMING,	)	
Plaintiff,	)	
v.	)	**Docket No.** 173-645
AMERICAN COLLOID COMPANY, **a Delaware corporation,**	)	
Defendant.	)	

FILED
APR - 8 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 American Colloid Company ("American"), alleging that American failed to comply with requirements to control fugitive dust in work areas and the D & C Bunker (BV-13) as required by conditions F2(e) and P60-0003 of permit 3-1-133-2, held by American at its Lovell Plant ("Facility"), located in Big Horn County, Wyoming, in violation of the Act, the Wyoming Air Quality Standards and Regulations ("WAQSR"), and permit no. 3-1-133-2. DEQ/AQD and American (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. American is a Delaware 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. 3-1-133-2.

III. Background

A. American

1. American owns and operates the Facility in Big Horn County, Wyoming.

2. American holds DEQ/AQD permit 3-1-133-2 relating to the Facility.

3. American 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 Permitting Program and Permit 3-1-133-2

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 3 of the WAQSR prescribes the applicability and procedures for issuing permits to major sources under DEQ/AQD's permitting program.

4. On or about May 22, 2008, the DEQ/AQD issued permit 3-1-133-2 to operate its Facility located in Big Horn County, Wyoming.

5. Condition F2(e) of permit 3-1-133-2 requires "All unpaved portions of haul roads, access roads and work areas shall be treated with water and/or chemical dust suppressant on a schedule sufficient to control fugitive dust from vehicle traffic and wind erosion."

6. A DEQ/AQD inspection of American's Facility, noted that significant fugitive dust from the work area with no dust control measures being observed by the DEQ/AQD inspector.

7. Condition P60-0003 of permit 3-1-133-2 requires "At all times, including periods of startups, shutdowns, and malfunction, the permittee shall, to the extent practicable, maintain and operate the sources listed in condition P60-0001(a) of this permit including associated air pollution control equipment, in a manner consistent with good air pollution control practice for minimizing emissions."

8. A DEQ/AQD inspection of American's Facility, noted a failure to effectively control fugitive emissions allowing heavy fugitive emissions from the D & C Bunker which is supposed to be controlled by baghouse BV-13.

9. Pursuant to WYO. STAT. ANN. § 35-11-701, the DEQ/AQD issued a Notice of Violation, Docket No. 4355-08 ("NOV") to American on September 3, 2008, alleging in part that American violated the Act, the WAQSR, permit no. 3-1-133-2, by failing to control fugitive dust as required by condition F2(e) of permit 3-1-133-2 and by failing to maintain and operate the sources listed

in condition P60-0001(a) as required by condition P60-0003 of permit 3-1-133-2, at its Facility.

10. 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 American of entry by the Court of this Consent Decree, American, 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 total sum of $17,500.00 as a full and complete cash payment to resolve this matter ("Stipulated Penalty Amount"). Of the total penalty amount, $10,000.00 is for resolution of alleged fugitive emission violations at American's D & C Bunker and $7,500.00 is for alleged fugitive dust emission violations at American's work area. 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 American that DEQ/AQD alleged in the Complaint initiating this action or in the NOV.

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

D. Within thirty (30) days after the complete and satisfactory performance by American 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 American, 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 American 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. American 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, American 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. 3-1-133-2.

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 American'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 7 day of April, 2009.

s/ [signature]
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 8 day of Apr 09 20__.

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:

David Finley, Administrator
Air Quality Division

Date 3/26/09

John Corra, Director
Department of Environmental Quality

Date 3/26/09

FOR AMERICAN COLLOID COMPANY:

Name: Steve Wolkersd
Title: Plant Manager
ACC/Lovell

Date 3/19/09

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

Date 3·26·09

APPROVAL AS TO FORM:

Kathleen B. Dixon # 52426
Chapin & Dixon, LLP
104 South Wolcott, Suite 600
Casper, Wyoming 82601
(307) 234-7321
Attorney for American Colloid Company

Date 3/23/09