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

**FILED**

PEOPLE OF THE STATE OF )  
WYOMING, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
FMC WYOMING CORPORATION, )  
a Delaware corporation, )  
 )  
Defendant. )

AUG 21 2009

GERRIE E. BISHOP  
CLERK OF THE DISTRICT COURT

Docket No. 174-527

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COMPLAINT

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Plaintiff, the People of the State of Wyoming, by and through the Department of Environmental Quality, Air Quality Division ("DEQ/AQD") and Wyoming's Attorney General (collectively referred to hereinafter as "Wyoming"), file this civil action against FMC Wyoming Corporation, a Delaware corporation ("FMC") for failing to comply with WYO. STAT. ANN. § 35-11-901(a) (West 2008), Wyoming Air Quality Standards and Regulations ("WAQSR"), and permit 3-1-083 for failing to operate and maintain the NO<sub>x</sub> and SO<sub>2</sub> Continuous Emission Monitoring Systems on Boiler 2, preventing the monitoring systems from being in continuous operation during all periods of time that the process equipment was operating at its Granger Soda Ash Plant located in Sweetwater County, Wyoming.

NATURE OF THE ACTION

1. This is a civil action brought against FMC, pursuant to Sections 901(a) and 903(c) of the Wyoming Environmental Quality Act ("Act"), for certain air quality violations at FMC's Soda Ash Plant located in Sweetwater County, Wyoming. WYO. STAT. ANN. §§ 35-11-901(a) and 903(c).

2. As set forth in greater detail below, Wyoming alleges that FMC violated WYO. STAT. ANN. § 35-11-901(a), WAQSR Ch. 5, § 2(j)(v), and permit 3-1-083 condition P60-D2(b).

3. Wyoming seeks a civil penalty for these alleged past violations.

#### JURISDICTION AND VENUE

4. This Court has jurisdiction over the subject matter and the parties in this action as Wyoming seeks civil penalties against FMC pursuant to Section 901(a) of the Act. WYO. STAT. ANN. § 35-11-901(a).

5. Laramie County is the proper venue for this matter, as an action brought under Section 903(c) of the Act may be brought in Laramie County by the Attorney General, in the name of the people of the State of Wyoming. WYO. STAT. ANN. § 35-11-903(c).

#### PARTIES

6. The Department of Environmental Quality ("DEQ"), pursuant to WYO. STAT. ANN. §§ 35-11-104 and 109, is the executive branch agency of Wyoming state government vested by statute with the responsibility for administering and enforcing the Act, rules promulgated thereunder, and related permits. The DEQ/AQD is also charged with responsibility for administering the Act and the WAQSR. WYO. STAT. ANN. § 35-11-110.

7. Defendant, FMC, is a Delaware corporation that owns and operates a Soda Ash Plant located in Sweetwater County, Wyoming ("FMC Granger"). FMC is a "person" as defined in Section 103(a)(vi) of the Act and the WAQSR. WYO. STAT. ANN. § 35-11-103(a)(vi); WAQSR, Ch. 1, § 3(a).

#### STATUTORY AND REGULATORY BACKGROUND

8. The Act establishes a statutory scheme which is designed in part to enable the State of Wyoming to prevent, reduce and eliminate pollution; to preserve and enhance the State of Wyoming's air, water and land resources; and, to allow the State of Wyoming to plan development, use, reclamation and enhancement of its air, land and water resources. WYO. STAT. ANN. § 35-11-102.

9. "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. An administrator shall not issue permits and may issue a license under this act only as specifically authorized in this act." WYO. STAT. ANN. § 35-11-801(a).

10. Any person who violates any provision 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(a).

11. The WAQSR includes the general provisions for and adopts certain New Source Performance Standards and states: "[e]xcept for system breakdown, repairs, calibration checks, and zero and span adjustments required under paragraph (iv) of this section, all continuous monitoring systems shall be in continuous operation [.]" Ch. 5, § 2(j)(v).

12. Condition P60-D2(b) of permit 3-1-083 requires that, "[e]xcept for system breakdown, repairs, calibration checks, and zero and span adjustments required under WAQSR Chapter 5, Section 2(j)(iv), all continuous monitoring systems shall be in continuous operation [.]"

#### FACTS COMMON TO ALL CLAIMS

13. DEQ/AQD repeats and incorporates by this reference the allegations contained in paragraphs 1 through 12 of this Complaint.

14. On June 27, 2007, permit 3-1-083 was issued to FMC.

15. Pursuant to WYO. STAT. ANN. § 35-11-701, the DEQ/AQD issued a Notice of Violation, Docket No. 4421-09 ("NOV"), to FMC on January 22, 2009, alleging that FMC failed to operate and maintain its NO<sub>x</sub> and SO<sub>2</sub> Continuous Emission Monitoring Systems on Boiler 2, preventing the monitoring systems from being in continuous operation during all periods of time that the process

equipment was operating at its Soda Ash Plant located in Sweetwater County, Wyoming.

16. The FMC Granger Excess Emission Reports received by the DEQ/AQD between the second quarter of 2007 and the second quarter of 2008 show significant monitor downtime for the NO<sub>x</sub> and SO<sub>2</sub> Continuous Emission Monitoring Systems as set forth in more detail in Claims I and II below.

#### CLAIM I

##### **Failure to Operate and Maintain NO<sub>x</sub> Continuous Emission Monitoring Systems on Boiler 2.**

17. DEQ/AQD repeats and incorporates by this reference the allegations contained in paragraphs 1 through 16 of this Complaint.

18. FMC Granger Boiler 2 reports for NO<sub>x</sub> showed significant downtime of the monitoring system, with a high during the second quarter of 2007, at 8.5%.

19. FMC violated condition P60-D2(b) of permit no. 3-1-083 and the WAQSR, by failing to operate its NO<sub>x</sub> monitoring system for Boiler 2 during all times that its process equipment is operating. WAQSR. Ch. 5, § 2(j)(v).

20. FMC violated the Act by failing to comply with condition P60-D2(b) of permit no. 3-1-083 and the WAQSR, by failing to operate its NO<sub>x</sub> monitoring system for Boiler 2 during all times that its process equipment is operating. WYO. STAT. ANN. § 35-11-901(a).

21. Any person who violates any provision 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(a).

#### CLAIM II

##### **Failure to Operate and Maintain SO<sub>2</sub> Continuous Emission Monitoring Systems on Boiler 2.**

22. DEQ/AQD repeats and incorporates by this reference the allegations contained in paragraphs 1 through 21 of this Complaint.

23. FMC Granger Boiler 2 reports for SO<sub>2</sub> showed significant downtime of the monitoring system, with a high during the first quarter of 2008, at 10%.

24. FMC violated condition P60-D2(b) of permit no. 3-1-083 and the WAQSR, by failing to operate its SO<sub>2</sub> monitoring system for Boiler 2 during all times that its process equipment is operating. WAQSR. Ch. 5, § 2(j)(v).

25. FMC violated the Act by failing to comply with condition P60-D2(b) of permit no. 3-1-083 and the WAQSR, by failing to operate its SO<sub>2</sub> monitoring system for Boiler 2 during all times that its process equipment is operating. WYO. STAT. ANN. § 35-11-901(a).

26. Any person who violates any provision 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(a).

#### PRAYER FOR RELIEF

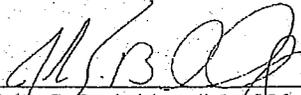
WHEREFORE, Plaintiff, the People of the State of Wyoming, pray that:

A. This Court enter judgment in favor of the Plaintiff on the Claims asserted;

B. This Court assess appropriate penalties against Defendant, FMC Wyoming Corporation, as provided in Section 901(a) of the Act, WYO. STAT. ANN. § 35-11-901(a); and

C. This Court award such other and further relief as it deems appropriate.

DATED this 21<sup>st</sup> day of August, 2009.

  
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