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

FILED
SEP 2 2 2009
GERRIE E. BISHOP
CLERK OF THE DISTRICT COURT

PEOPLE OF THE STATE OF WYOMING,	)	
Plaintiff,	)	
v.	)	Docket No. 174-527
FMC WYOMING CORPORATION, a Delaware corporation,	)	
Defendant.	)	

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 FMC Wyoming Corporation ("FMC"), alleging that FMC failed to operate and maintain the NO_x and SO_2 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 ("Facility"), located in Sweetwater County, Wyoming, in violation of the Act, the Wyoming Air Quality Standards and Regulations ("WAQSR") and condition P60-D2(b) of permit 3-1-083. DEQ/AQD and FMC (collectively "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. FMC 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.

III. Background

A. FMC

1. FMC owns and operates the Facility in Sweetwater County, Wyoming.

2. FMC 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 Air Quality Permitting and Enforcement Program

1. 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.

2. "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).

3. 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).

4. 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).

5. 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 [.]"

6. On June 22, 2007, permit 3-1-083 was issued to FMC.

7. 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_x and SO_2 Continuous Emission Monitoring Systems on Boiler 1 and 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.

8. According to the NOV, 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_x and SO_2 Continuous Emission Monitoring Systems.

C. Failure to Operate and Maintain NO_x Continuous Emission Monitoring Systems on Boiler 2.

1. Boiler 2 reports for NO_x showed significant downtime of the monitoring system, with a high during the second quarter of 2007, at 8.5%.

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

3. The NOV alleges that 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_x monitoring system for Boiler 2 during all times that its process equipment is operating. WYO. STAT. ANN. § 35-11-901(a).

D. Failure to Operate and Maintain SO_2 Continuous Emission Monitoring Systems on Boiler 2.

1. Boiler 2 reports for SO_2 showed significant downtime of the monitoring system, with a high during the first quarter of 2008, at 10%.

2. The NOV alleges that FMC violated condition P60-D2(b) of permit no. 3-1-083 and the WAQSR, by failing to operate its SO_2 monitoring system for Boiler 2 during all times that its process equipment is operating. WAQSR. Ch. 5, § 2(j)(v).

3. The NOV alleges that 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_2 monitoring system for Boiler 2 during all times that its process equipment is operating. WYO. STAT. ANN. § 35-11-901(a).

IV. Settlement

A. Within thirty (30) days after notice to FMC of entry by the Court of this Consent Decree, FMC, without admitting any of the facts alleged in the NOV or Complaint, without admitting any other allegations referenced in Section IV(B),

and without admitting liability or failure to comply with any permit requirements, the WAQSR or the Act, agrees to pay to the DEQ/AQD the sum of twenty five thousand dollars and no cents ($25,000.00) 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.

B. The Parties agree that entering into this Consent Decree fully resolves potential allegations, whether or not specifically alleged in the NOV or Complaint, that Boiler 1 had excessive NO_x downtimes of 24% during the third quarter of 2006, 5.7% during the second quarter of 2007 and 11.8% during the first quarter of 2008; that Boiler 1 had excessive SO_2 monitor downtimes of 24% during the third quarter of 2006, 5.7% during the second quarter of 2007 and 12.1% during the first quarter of 2008; that Boiler 2 had excessive NO_x downtimes of 8.5% during the second quarter of 2007, 7.6% during the first quarter of 2008 and 6.9% during the second quarter of 2008; and that Boiler 2 had excessive SO_2 monitor downtimes of 8.5% during the second quarter of 2007, 10% during the first quarter of 2008, and 7% during the second quarter of 2008.

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 of this Consent Decree shall constitute full satisfaction of the claims against FMC that DEQ/AQD alleged in the Complaint initiating this action, the NOV and paragraph IV(B) of this Consent Decree.

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

D. Within thirty (30) days after the complete and satisfactory performance by FMC 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 FMC, 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 FMC 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. FMC 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, FMC neither admits nor denies that it violated any provision of the Act, the WAQSR, or the federal Clean Air Act.

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 FMC'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 21st day of Sept., 2009.

s/ Peter G. Arnold
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 21 day Sept 2009

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:

David Finley, Administrator
Air Quality Division

Date

John Corra, Director
Department of Environmental Quality

Date

FOR FMC WYOMING CORPORATION:

James Pearce
Resident Manager

8/20/09
Date

APPROVAL AS TO FORM:

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123 Capitol Building
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Attorney for DEQ/AQD

Date

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P.O. Box 1347
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(307) 778-4200
Attorney for FMC

Aug. 18, 2009
Date

P.O. Box 1347
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(307) 778-4200
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WE HEREBY CONSENT to the entry of this Consent Decree:

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

David Finley, Administrator
Air Quality Division

Date 8/31/09

John Corra, Director
Department of Environmental Quality

Date 8/31/09

FOR FMC WYOMING CORPORATION:

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Resident Manager

Date

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Date 8-31-09

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Date Aug. 18, 2009