

*Keith Sulle*

John S. Burbridge # 5-2856  
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Cheyenne, Wyoming 82002  
(307) 777 6946

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

PEOPLE OF THE STATE OF )  
WYOMING, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
MOUNTAIN GAS RESOURCES LLC, )  
 )  
Defendant. )

FEB 12 2010  
GERRIE E. BISHOP  
CLERK OF THE DISTRICT COURT

Docket No. 174-796

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CONSENT DECREE

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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, Mountain Gas Resources LLC, ("MGR"), alleging that MGR failed to comply with condition P60-KKK1(a)(iii) of permit 3-1-026-1, for not installing a thermocouple or equivalent device to detect the presence of a pilot flame on flares FS-101 and FS-801 at its Patrick Draw Gas Processing Plant and for failure to comply with condition 23 of permit MD-1143 for not installing a thermocouple or equivalent device to detect the presence of a flame on Vent Flare F-2 at its Red Desert Gas Plant ("Facilities"), both located in Sweetwater County, Wyoming, in violation of the Act, the Wyoming Air Quality Standards and Regulations ("WAQSR"), permit no. 3-1-026-1 and permit MD-1143. DEQ/AQD and MGR (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. MGR is a Delaware limited liability company and the owner and operator of the Facilities.

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 nos. 3-1-026-1 and MD-1143.

**III. Background**

A. MGR

1. MGR owns and operates the Facilities in Sweetwater County, Wyoming.

2. MGR holds DEQ/AQD permit nos. 3-1-026-1 and MD-1143 relating to the Facilities.

3. MGR 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 Permits 3-1-026-1, and MD-1143

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 September 6, 2005, the DEQ/AQD issued permit 3-1-026-1 to MGR to operate its Patrick Draw Gas Processing Plant located in Sweetwater County, Wyoming.

5. Condition P60-KKK1(a)(iii) of permit 3-1-026-1 requires MGR to monitor for the presence of a pilot flame for flares FS-101 and FS-801 by installing a thermocouple or any other equivalent device.

6. On February 21, 2008, MGR submitted a letter to the DEQ/AQD stating that a thermocouple or equivalent device to monitor the pilot flame for flares FS-101 and FS-801 had not been installed at the Patrick Draw Gas Plant.

7. Pursuant to WYO. STAT. ANN. § 35-11-701(c), the DEQ/AQD issued a Notice of Violation, Docket No. 4243-08 ("NOV"), to MGR on March 27, 2008, alleging in part that MGR violated the Act, the WAQSR and permit no. 3-1-026-1 by failing to install a thermocouple or equivalent device for monitoring the pilot flame for flares FS-101 and FS-801 as required by condition P60-KKK1(a)(iii) of permit 3-1-026-1 at its Patrick Draw Gas Processing Plant located in Sweetwater County, Wyoming.

8. On February 27, 2008, MGR installed a thermocouple or equivalent device and began monitoring flare FS-101 and on March 26, 2008,

MGR installed a thermocouple or equivalent device and began monitoring flare FS-801.

9. On or about April 14, 2005, the DEQ/AQD issued permit MD-1143 to MGR.

10. On June 2, 2008, MGR submitted a letter to the DEQ/AQD stating that a thermocouple or equivalent device used to monitor and detect the presence of a flame on Vent Flare F-2 was not installed at the Red Desert Gas Plant.

11. Condition 23 of permit MD-1143 requires MGR to monitor for the presence of a pilot flame for flare F-2 by installing a thermocouple or any other equivalent device at the Red Desert Gas Plant.

12. MGR violated the Act, the WAQSR and condition 23 of permit MD-1143, by failing to install a thermocouple or equivalent device to detect the presence of a pilot flame on flare F-2 for the Red Desert Gas Plant located in Sweetwater County, Wyoming.

13. On July 23, 2008, MGR installed a thermocouple or equivalent device and began monitoring flare F-2 for the Red Desert Gas Plant.

14. 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(a).

#### **IV. Settlement**

A. Within thirty (30) days after notice to MGR of entry by the Court of this Consent Decree, MGR, without admitting any of the facts alleged in the NOV or Complaint and without admitting liability or failure to comply with any permit requirement, agrees to pay to the DEQ/AQD the total sum of \$75,000.00 as a full and complete cash payment to resolve this matter ("Stipulated Penalty Amount").

The Stipulated Penalty Amount is to be allocated as follows: \$25,000.00 for alleged violations at the Red Desert Gas Plant and \$50,000.00 for alleged violations at the Patrick Draw Gas Plant. 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 of this Consent Decree shall constitute full satisfaction of the claims against MGR that DEQ/AQD alleged in the Complaint initiating this action or in the NOV and any that could have been raised based on the NOV.

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

D. Within thirty (30) days after the complete and satisfactory performance by MGR 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 MGR, 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 MGR 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. MGR 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, MGR 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 nos. 3-1-026-1 and MD-1143.

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 MGR'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.

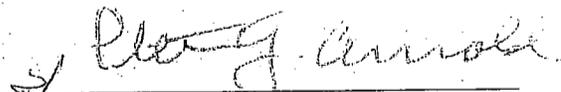
**XI. Retention of Jurisdiction**

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 8<sup>th</sup> day of Feb, 2009<sup>10</sup>.

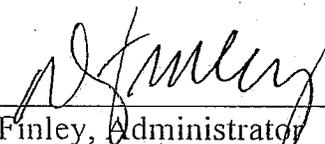
  
DISTRICT COURT JUDGE

STATE OF WYOMING COUNTY OF LARAMIE, SS CHEYENNE  
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 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<sup>th</sup> day of Feb, 2009<sup>10</sup>  
GERRIE E. BISHOP  
Clerk of District Court

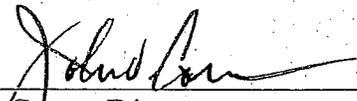
By   
Deputy

WE HEREBY CONSENT to the entry of this Consent Decree:

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

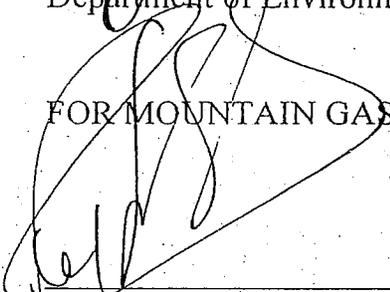
  
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David Finley, Administrator  
Air Quality Division

 11/13/09  
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Date

  
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John Corra, Director  
Department of Environmental Quality

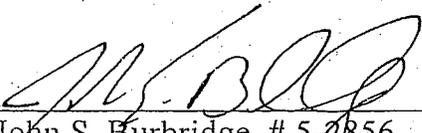
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Date

FOR MOUNTAIN GAS RESOURCES LLC:

  
\_\_\_\_\_  
Rex L. Specht  
Operations Manager

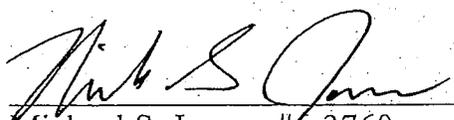
10/29/09  
\_\_\_\_\_  
Date

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

11.13.09  
\_\_\_\_\_  
Date

APPROVAL AS TO FORM:

  
\_\_\_\_\_  
Michael S. James, #6-3760  
Anadarko Petroleum Corporation  
1099 18<sup>th</sup> Street, suite 1800  
Denver, Colorado 80202-1918  
(720) 929-6208  
Attorney for Mountain Gas Resources LLC.

11/4/09  
\_\_\_\_\_  
Date