

Keith Kulle

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

FEB 12 2010

GERRIE E. BISHOP
CLERK OF THE DISTRICT COURT

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

Docket No. 174-795

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 Mountain Gas Resources LLC, ("MGR"), alleging that MGR failed to comply with the requirement to obtain an operating permit from the DEQ/AQD within the required time period at its Hay Reservoir Central Compressor Station ("Facility") located in Sweetwater County, Wyoming, in violation of the Act, and the Wyoming Air Quality Standards and Regulations ("WAQSR"). 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 the owner and operator of the Facility.

B. DEQ/AQD is the agency of Wyoming state government responsible for enforcing the Act and the WAQSR.

III. Background

A. MGR

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

2. 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

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. The Act establishes the DEQ/AQD state operating permit program for major sources to include, sources subject to the operating permit program, procedures for applying for an operating permit, review of permit applications and issuance of air quality permits. WYO. STAT. ANN. §§ 35-11-203 through 206.

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. "Any stationary source or group of stationary sources subject to this section shall submit a timely and complete permit application in accordance with this paragraph." WAQSR, Ch. 6, § 3(c).

5. "A timely application for a source applying for an operating permit under this section for the first time is one that is submitted to the Division within twelve (12) months after the source becomes subject to this section." WAQSR, Ch. 6, § 3(c)(i)(A).

6. Pursuant to WYO. STAT. ANN. § 35-11-701(c), the DEQ/AQD issued a Notice of Violation, Docket No. 4500-09 ("NOV"), to MGR on May 29, 2009, alleging in part that MGR violated the Act and the WAQSR, by failing to comply with the requirement to obtain an operating permit from the DEQ/AQD within the required time period at its Facility located in Sweetwater County, Wyoming.

7. On March 17, 2009, a DEQ/AQD engineer reviewed MGR's 2008 Emission Inventory for the Facility and determined that MGR installed engines which could emit up to 114 tons per year of Carbon Monoxide.

8. Having engines that can emit 114 tons per year of Carbon Monoxide at the Facility makes the site a major source pursuant to current air quality standards.

9. MGR's engines at Facility became operational on July 25, 2007 making the facility subject to DEQ/AQD operating permit requirements.

10. In accordance with WAQSR, Chapter 6, Section 3(c)(i)(A), MGR would have needed to submit a permit application for an operating permit by July 25, 2008 for its Facility.

11. MGR did not file a permit application for the Facility by July 25, 2008.

12. MGR violated the Act and the WAQSR, for failure to comply with the requirement to obtain an operating permit from the DEQ/AQD within the required time period at its Facility located in Sweetwater County, Wyoming.

13. 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 \$30,000.00 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.

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.

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 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 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.

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.

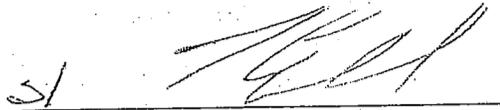
XI. Retention of Jurisdiction

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 9 day of Feb., 2009.

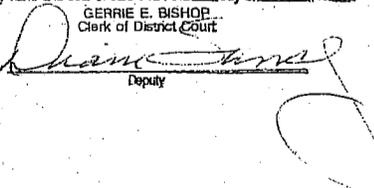

DISTRICT COURT JUDGE

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 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 13 day of Feb 2009

GERRIE E. BISHOP
Clerk of District Court

By 
Deputy

WE HEREBY CONSENT to the entry of this Consent Decree:

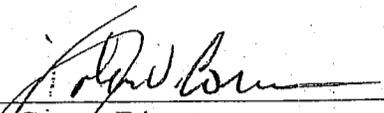
FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:



David Finley, Administrator
Air Quality Division

11/13/09

Date

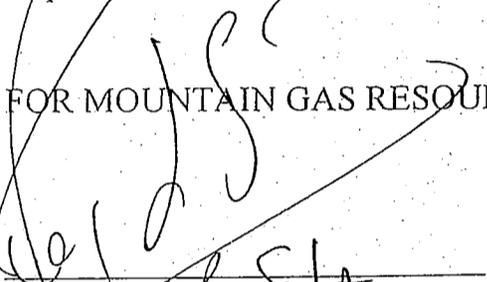


John Corra, Director
Department of Environmental Quality

11/13/09

Date

FOR MOUNTAIN GAS RESOURCES LLC:

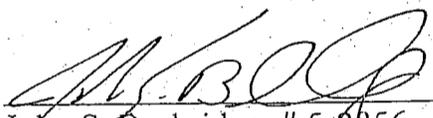


Name: Carl S. Schatz
Title: Op Mgr

10/27/09

Date

APPROVAL AS TO FORM:

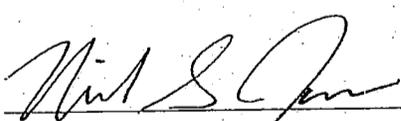


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(307) 777-6946
Attorney for DEQ/AQD

11-13-09

Date

APPROVAL AS TO FORM:



Michael S. James, #6-3760
Attorney for Mountain Gas Resources LLC

11/4/09

Date