Keith Guille

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

PEOPLE OF THE STATE OF WYOMING, Plaintiff, v. HERMES CONSOLIDATED, INC., a Delaware corporation dba WYOMING REFINING COMPANY, Defendant.	))))))))))))	Docket No. 175-602 FILED MAR 17 2010 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 Hermes Consolidated, Inc., a Delaware corporation dba Wyoming Refining Company ("Wyoming Refining"), alleging that Wyoming Refining failed to comply with permitted sulfur dioxide ("SO2") emission limits for the Crude Heater (H-03) and Alky Reboiler (H-06) for the Wyoming Refining refinery facility ("Facility") located in Newcastle, Weston County, Wyoming, in violation of the Act, the Wyoming Air Quality Standards and Regulations ("WAQSR") and Condition No. 12 of DEQ/AQD Permit MD-1500A. The DEQ/AQD and Wyoming Refining (collectively referred to hereinafter as "Parties") represent, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties at arms length and 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, having agreed to the following terms for resolving this litigation prior to trial, without requiring the defendant to file an answer or 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

This Court has jurisdiction over the subject matter and the Parties in this civil action under Section 901(a) of the Act (WYO. STAT. ANN. § 35-11-901(a)) and venue is proper in Laramie County under Section 903(c) of the Act (WYO. STAT. ANN. § 35-11-903(c)).

II. Parties

A. Hermes Consolidated, Inc. is a Delaware corporation doing business as Wyoming Refining Company ("Wyoming Refining") and is the owner and/or operator of the Facility located in Newcastle, Weston County, Wyoming.

B. The DEQ/AQD is the agency of Wyoming state government responsible for enforcing the Act, the WAQSR, the State Implementation Plan ("SIP") adopted pursuant to the federal Clean Air Act as amended, and permits issued pursuant to those provisions, including DEQ/AQD Permit MD-1500A.

III. Background

A. Wyoming Refining

1. Wyoming Refining owns and/or operates the Facility.

2. The Facility is subject to various DEQ/AQD regulatory and permit requirements including DEQ/AQD Permit MD-1500A.

B. DEQ/AQD Construction and Modification Permitting Program and DEQ/AQD Permit MD-1500A.

1. WYO. STAT. ANN. § 35-11-801 and Chapter 6, Section 2 of the WAQSR require that persons obtain a DEQ air quality 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 2 of the WAQSR prescribes the applicability and procedures for issuing permits to sources under the DEQ/AQD's construction and modification permitting program.

4. Chapter 6, Section 2(f) allows reasonable conditions to be imposed upon construction or modification permits, including emission limits and emission testing and monitoring requirements.

5. On or about May 30, 2007, the DEQ/AQD issued Permit MD-1500A to Wyoming Refining for the Facility. Condition No. 12 of Permit MD-1500A established emission limits for sulfur dioxide (SO_2) and nitrogen oxides (NO_X) for various heaters and boilers, including the Crude Heater (H-03) and the Alky Reboiler (H-06). The SO_2 emission limit for the Crude Heater (H-03) is set at 161.4 tons per year ("TPY") and the Alky Reboiler (H-06) is set at 58.8 TPY.

6. Pursuant to WYO. STAT. ANN. § 35-11-701, the DEQ/AQD issued Notice of Violation Docket No. 4360-08 ("NOV") to Wyoming Refining on September 12, 2008, alleging in part that Wyoming Refining violated the Act, the WAQSR, and DEQ/AQD Permit MD-1500A by failing to comply with the Facility's SO_2 emission limit for the Crude Heater (H-03) and the Alky Reboiler (H-06) as required by Condition No. 12 of DEQ/AQD Permit MD-1500A.

7. Any person who violates any provision of Article 2 of the Act or any rule, regulation, standard or permit issued or adopted pursuant to those provisions may be 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 Wyoming Refining of entry by the Court of this Consent Decree, Wyoming Refining, without admitting any of the facts alleged in the NOV or Complaint and without admitting liability or failure to comply

with statutory, regulatory or DEQ/AQD permit requirements, agrees to pay to the DEQ/AQD the sum of forty thousand dollars and no cents ($40,000.00) as a full and complete cash payment to resolve this matter ("Stipulated Civil Penalty"). The check shall be made payable to the Department of Environmental Quality and shall be delivered to Nancy Vehr, Sr. Assistant Attorney General, Wyoming Attorney General's Office, 123 Capitol Building, Cheyenne, Wyoming 82002.

B. Payment of the Stipulated Civil Penalty shall constitute full satisfaction of Wyoming Refining's obligations under this Consent Decree.

V. Release and Covenant Not to Sue and Dismissal with Prejudice

A. DEQ/AQD agrees that payment of the Stipulated Civil Penalty as specified in Section IV.A. of this Consent Decree shall constitute full satisfaction of the claims against Wyoming Refining that DEQ/AQD alleged in the Complaint initiating this action and in DEQ notice of Violation Docket No. 4360-08 ("NOV").

B. In consideration of the Stipulated Civil Penalty paid by Wyoming Refining as specified in Section IV.A. of this Consent Decree, DEQ/AQD and the State of Wyoming hereby release and covenant not to sue Wyoming Refining, 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 arising out of the facts, transactions, or events which were alleged in the Complaint 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 Wyoming Refining as specified in Section IV.A. of this Consent Decree.

D. Within thirty (30) days after payment by Wyoming Refining of the Stipulated Civil Penalty subject to the conditions stated in Section IV., the DEQ/AQD will request that the Court terminate this Consent Decree and dismiss this action with prejudice as to all claims which were made in this lawsuit.

F. The terms of Section IV. and V. shall survive termination of the Consent Decree.

VI. Parties Bound

A. This Consent Decree shall apply to and be binding upon Wyoming Refining, its successors and assigns and upon the DEQ 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 Wyoming Refining of its duty to comply with the Act, the WAQSR, Wyoming's SIP, the federal Clean Air Act, and any rules, regulations or 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. Wyoming Refining 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

The terms of this Consent Decree, which embody the comprehensive stipulated settlement between the Parties and are entered into to avoid litigation and terminate this controversy are not severable.

VIII. Reservation of Rights

A. By signing this Consent Decree, Wyoming Refining neither admits nor denies that it violated any provision of the Act, the WAQSR, Wyoming's SIP, the federal Clean Air Act, DEQ/AQD Permit MD-1500A, or any other permits issued pursuant to such authority. Nor shall this Consent Decree be construed as an admission of liability as to any such violation alleged herein, in the Complaint, or in the NOV. By entering into this Consent Decree, Wyoming Refining neither admits nor denies the validity of any allegation contained in the NOV or the Complaint.

B. DEQ 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 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.

D. Wyoming Refining shall not be required to file an Answer to the Complaint prior to the Court's acting upon the Parties' Joint Motion for Consent Decree, or if the Court approves this Consent Decree. In the event that the Court does not approve this Consent Decree as presented and stipulated to by the Parties, all rights, claims and defenses of the respective parties are expressly reserved, and nothing herein or in the Parties' Joint Motion for Entry of Consent Decree shall be deemed to be an admission of any fact or law by either party, or to prejudice or waive either party's respective rights in this litigation. The Parties further agree that in such event they will move the Court for a scheduling and case management order, and to set a date by which Wyoming Refining shall file an Answer to the Complaint, and DEQ/AQD agrees that it will not seek entry or judgment by default against Wyoming Refining for not filing an answer prior to the date set by the Court in such order.

IX. Termination of Consent Decree

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 Wyoming Refining's obligations under this Consent Decree and the Court's entry of a Termination and Dismissal Order.

X. Attorneys' Fees/Costs of Action

Each Party shall bear its own attorneys fees, costs and expenses of this action.

XI. Retention of Jurisdiction

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

The signatories certify that they are duly authorized to bind their respective Parties to this Consent Decree.

DATED this 16th day of March, 2009 10.

s/ Michael K. Davis
DISTRICT COURT JUDGE

WE HEREBY CONSENT to the entry of this Consent Decree:

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

Date: 2/25/2010 By: _____
David Finley, Administrator
Air Quality Division

Date: 2/25/10 By: _____
John Corra, Director
Department of Environmental Quality

FOR HERMES CONSOLIDATED, INC. dba WYOMING REFINING COMPANY:

Date: 12/19/2008 By: _____
Bob Neufeld, Vice-President
Environment and Governmental Relations

APPROVAL AS TO FORM:

Date: 12/22/2009 By: _____
Keith S. Burron (5-2884)
Associated Legal Group, LLC
1807 Capitol Avenue, Suite 203
Cheyenne, WY 82001
(307) 632-2888
Attorney for Wyoming Refining

STATE OF WYOMING COUNTY OF LARAMIE, SS CHEYENNE

I Gene 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 17 day of March 2010

Gene E. Bishop
Clerk of District Court

By: _____

Date: February 24, 2010 By: Nancy E. Vehr

Nancy E. Vehr (6-3341)
Sr. Asst. Attorney General
Attorney General's Office
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Cheyenne, WY 82002
(307) 777-6946
Attorney for DEQ/AQD