

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

PEOPLE OF THE STATE OF  
WYOMING,

Plaintiff,

v.

WYOMING PIPELINE COMPANY,  
a Wyoming corporation,

Defendant.

Docket No. 176-76

**FILED**

JUL 01 2010

GERRIE E. BISHOP  
CLERK OF THE DISTRICT COURT

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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 Wyoming Pipeline Company ("Wyoming Pipeline"), alleging that Wyoming Pipeline failed to timely submit an operating permit application for the Mush Creek Junction facility ("Facility") located in Weston County, Wyoming, in violation of the Act and the Wyoming Air Quality Standards and Regulations ("WAQSR"). The DEQ/AQD and Wyoming Pipeline (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. Wyoming Pipeline, a Wyoming corporation, is the owner and/or operator of the Facility located in 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.

## III. Background

### A. Wyoming Pipeline

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

### B. DEQ/AQD Operating Permit Program

1. Wyoming's operating permit program for major sources defines sources subject to the program, operating permit application procedures, review of permit applications and issuance of operating permits. WYO. STAT. ANN. §§ 35-11-203 through -206.

2. WYO. STAT. ANN. § 35-11-203(a) defines source categories subject to the DEQ/AQD operating permit program. In pertinent part, these sources include any stationary source or group of sources that: "(A) Has the potential to emit one hundred (100) tons or more per year of any pollutant regulated under the Clean Air Act and is a major stationary source as defined in Section 302 of the Clean Air Act[.]" WYO. STAT. ANN. § 35-11-203(a).

3. WYO. STAT. ANN. § 35-11-203(b) states in relevant part, "[a]fter the effective date of the operating permit program authorized under W.S. 35-11-203 through 35-11-212, it shall be unlawful for any person . . . to operate any source required to have

a permit under this section, without having complied with the provisions of the operating permit program." WYO. STAT. ANN. § 35-11-203(b).

4. Chapter 6, Section 3 of the WAQSR prescribes the applicability and procedures for issuing permits to sources under Wyoming's operating permit program. WAQSR, Ch. 6, § 3.

5. Chapter 6, Section 3(c)(i) of the WAQSR describes the timeline for operating permit program application submissions. WAQSR, Ch. 6, § 3(c)(i).

6. Chapter 6, Section 3(c)(i)(A) of the WAQSR states: "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).

7. Chapter 6, Section 3(d)(ii) of the WAQSR states: "Except as provided in this paragraph or in Chapter 6, Section 3(d)(iii), no source requiring an operating permit under Chapter 6, Section 3 may operate after the time that it is required to submit a timely and complete application, except in compliance with a permit issued under this section." WAQSR, Ch. 6, § 3(d)(ii).

8. Wyoming Pipeline has submitted an application for an operating permit for the Mush Creek Junction, Tank # 104 and the DEQ/AQD is currently reviewing the application.

9. Pursuant to WYO. STAT. ANN. § 35-11-701, the DEQ/AQD issued Notice of Violation Docket No. 4618-10 ("NOV") to Wyoming Pipeline on December 31, 2009, alleging in part that Wyoming Pipeline violated the Act and the WAQSR by failing to obtain an operating permit for the Facility.

10. 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

Without admitting any of the facts alleged in the NOV or Complaint, and without admitting any liability or failure to comply with any statutory or regulatory requirements, Wyoming Pipeline agrees to the assessment of a total civil penalty in the amount of thirty five thousand dollars and no cents (\$35,000.00) ("Total Stipulated Penalty Amount") payable as follows:

A. Reduced Stipulated Cash Penalty Payment. Within thirty (30) days after notice to Wyoming Pipeline of entry by the Court of this Consent Decree, Wyoming Pipeline agrees to pay to the DEQ/AQD the sum of seventeen thousand five hundred dollars and no cents (\$17,500.00) ("Reduced Stipulated Cash Penalty"). 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. Supplemental Environmental Project. In lieu of paying the seventeen thousand five hundred dollars and no cents (\$17,500.00) balance remaining after payment of the Reduced Stipulated Cash Penalty ("Stipulated Penalty Remaining Balance"), Wyoming Pipeline agrees to complete the following Supplemental Environmental Project ("SEP"):

i. A SEP is a project that is beneficial for the environment and is otherwise not required by applicable statutes, regulations, permits or orders. This SEP will benefit the environment by controlling Volatile Organic Compounds ("VOCs") emissions from Tank # 104, which is not required to be controlled.

ii. Wyoming Pipeline agrees to spend at least thirty five thousand dollars and no cents (\$35,000.00) in capital construction costs ("SEP Minimum Expenditure Amount") to construct and install an Internal Floating Roof ("IFR") on Wyoming Pipeline's Mush Creek Junction Tank #104 located in Weston County, Wyoming.

iii. Wyoming Pipeline shall complete the SEP by no later than December 1, 2010 ("SEP Completion Deadline"), unless Wyoming Pipeline and DEQ/AQD mutually agree to an extension. The SEP completion deadline shall be revised if there are unforeseen delays caused by Wyoming Pipeline not being able to reasonably obtain necessary material or labor, or if there is a delay in DEQ/AQD's issuance of the permit for the IFR.

iv. By no later than December 31, 2010, Wyoming Pipeline shall submit a SEP Completion Report to the DEQ/AQD, Attn: Mr. Robert Gill, 122 West 25<sup>th</sup> Street, Cheyenne, WY 82002 ("SEP Completion Report Deadline"), unless Wyoming Pipeline and DEQ/AQD mutually agree to an extension. If there is an extension of the SEP completion deadline, the SEP completion report shall be submitted within thirty (30) days of the SEP completion deadline extension date or on such date mutually agreed by Wyoming Pipeline and DEQ/AQD. The SEP Completion Report shall describe the completed SEP, itemized costs and receipts, and certification that the SEP has been fully implemented pursuant to the provisions of this Consent Decree.

v. Wyoming Pipeline agrees that if it does not complete the SEP by the SEP Completion Deadline (or extended deadline) or if the amount it actually spends to complete the SEP is less than the SEP Minimum Expenditure Amount, then Wyoming Pipeline will pay the DEQ/AQD a prorated amount calculated by taking the SEP Minimum Expenditure Amount and subtracting the amount Wyoming Pipeline actually spent on the SEP and then dividing that difference by a factor of two (2) ("Prorated Stipulated Penalty Remaining Balance"). Any Prorated Stipulated Penalty Remaining Balance is due no later than thirty (30) days after submitting the SEP Completion Report to the DEQ/AQD.

vi. Wyoming Pipeline certifies that as of the date it signs this Consent Decree, it is not required to perform or develop the SEP by any federal, state or local law or regulation; nor is Wyoming Pipeline required to perform or develop

the SEP pursuant to any other agreement or relief in any other case. Wyoming Pipeline further certifies that it has not received and is not presently negotiating to receive credit for this SEP in any other pending action.

C. Payment of the Reduced Stipulated Cash Penalty and successful completion of the SEP shall constitute full satisfaction of Wyoming Pipeline'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 Reduced Stipulated Cash Penalty and completion of the SEP as specified in Section IV of this Consent Decree shall constitute full satisfaction of the claims against Wyoming Pipeline that Wyoming alleged in the Complaint initiating this action and in the NOV.

B. In consideration of the Reduced Stipulated Cash Penalty and completion of the SEP as specified in Section IV of this Consent Decree, DEQ/AQD and the State of Wyoming hereby release and covenant not to sue Wyoming Pipeline, 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, and, until final DEQ/AQD action on the application, Wyoming Pipeline's November 30, 2009 Permit Application shall be deemed timely under Chapter 6, Sections 3(c) and 3(d)(ii) of the WAQSR provided Wyoming Pipeline continues to provide any additional information identified by the DEQ/AQD as being needed to process the application.

C. This covenant not to sue is expressly conditioned upon the complete and satisfactory performance by Wyoming Pipeline as specified in Section IV of this Consent Decree.

D. Within thirty (30) days after payment by Wyoming Pipeline of the Reduced Stipulated Cash 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.

E. 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 Pipeline, 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 Pipeline 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 Pipeline 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 Pipeline neither admits nor denies that it violated any provision of the Act, the WAQSR, Wyoming's SIP, the federal Clean Air Act, or any 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 Pipeline 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 Pipeline shall not be required to file an Answer to the Complaint prior to the Court's acting upon the Parties' Joint Motion for Entry of 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 Pipeline shall file an Answer to the Complaint, and DEQ/AQD agrees that it will not seek entry or judgment by default against Wyoming Pipeline 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 Pipeline'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.

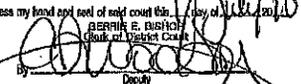
**XII. Authority**

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

DATED this 28 day of June, 2010.

  
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DISTRICT COURT JUDGE

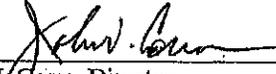
STATE OF WYOMING COUNTY OF LARAMIE, SS CHEYENNE  
I Gerrie E. Bishop, Clerk of the District Court in and for the County of Laramie, Wyoming, do hereby certify that the within and foregoing is a full true and correct copy of the original thereof as the same appears on file or of record in my office and that the same is in full force and effect as of this date.

Witness my hand and seal of said court this 28 day of June, 2010.  
GERRIE E. BISHOP  
Clerk of District Court  
By   
Deputy

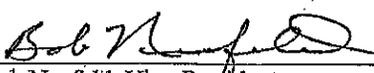
WE HEREBY CONSENT to the entry of this Consent Decree:

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

Date: 6-22-10 By:   
Name: STEVEN A. DIETRICH  
Acting Administrator, Air Quality Division

Date: 6/22/10 By:   
John V. Gorra, Director  
Department of Environmental Quality

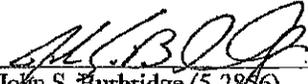
FOR WYOMING PIPELINE COMPANY:

Date: 5/24/2010 By:   
Bob Neufeld, Vice-President  
Environment and Governmental Relations

APPROVAL AS TO FORM:

Date: 5/28/2010 By:   
Keith S. Burfon (5-2884)  
Associated Legal Group, LLC  
1807 Capitol Avenue, Suite 203  
Cheyenne, WY 82001  
(307) 632-2888  
Attorney for Wyoming Pipeline Company

APPROVAL AS TO FORM:

Date: 6.22.10 By:   
John S. Burbridge (5-2886)  
Sr. Asst. Attorney General  
Attorney General's Office  
123 Capitol Building  
Cheyenne, WY 82002  
(307) 777-6946  
Attorney for Wyoming