

J. Mark Stewart
Wyoming State Bar #6-4121
422 West 26th Street
P.O. Box 43
Cheyenne, WY 82003
Telephone: (307) 634-3210
Telefax: (307) 778-7118

IN THE DISTRICT COURT
FIRST JUDICIAL DISTRICT, LARAMIE COUNTY, WYOMING

People of the State of Wyoming,)
)
 Plaintiff,)
)
 v.)
)
 Asher Associates, Inc.,)
 a Colorado Corporation,)
)
 Defendant.)

FILED
Docket No. 174-660

AUG 18 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 Asher Associates, LLC, formerly doing business as Asher Associates, Inc. ("Asher"), alleging that Asher failed to comply with requirements to control emissions and gas production facilities as required by conditions 2 and 4 of Permit No. MD-309, held by Asher for its Bright Pool Oil & Gas Production Facility and its Beaver Hole Pool Oil & Gas Production Facility

Clerk of District Court certifies copies were distributed on August 18, 2010 to: Stewart (B)
Burbridge (B)

and alleging a failure to obtain a permit for a new emission source as it Federal 32-20 Water Injection Facility, all located in Niobrara County, Wyoming. DEQ/AQD and Asher (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. Asher is a Colorado limited liability company and is the operator of the Bright Pool Oil & Gas Production Facility, the Beaver Hole Pool Oil & Gas Production Facility and the Federal 32-20 Water Injection Facility (collectively referred to hereinafter as 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 No. MD-309.

III. Background

A. Asher

1. Asher operates the Facilities in Niobrara County, Wyoming.
2. Asher holds DEQ/AQD Permit No. MD-309 relating to the Facilities.
3. Asher 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 Permit No. MD-309

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 2 of the WAQSR prescribes the applicability and procedures for issuing permits to sources under DEQ/AQD's construction and modification permitting program.

4. On or about February 3, 1997, the DEQ/AQD issued Permit No. MD-309 to Asher for its Facilities located in Niobrara County, Wyoming. Asher committed to flaring all emissions from its Bright Pool oil storage tanks in its May 21, 1996 cover letter included with its Bright Pool permit application.

5. Condition 2 of Permit No. MD-309 requires "That all commitments and descriptions set forth in the application for this permit, unless superseded by a specific condition of this permit, are incorporated herein by this reference and are enforceable as conditions of the this permit."

6. DEQ/AQD also alleges that Permit No. MD-309 requires, through Condition 2, that Asher flare all emissions from its Beaver Hole and Bright Pool oil storage tanks.

7. A DEQ/AQD inspection of Asher's Bright Pool and Beaver Hole facilities on June 25, 2007 noted oil storage tank emissions were not being flared but vented directly to the atmosphere.

8. During follow up inspections on November 20, 2008; January 8, 2009, February 9, 2009; March 2, 20-09, April 9, 2009; May 26, 2009; June 29, 2009 and August 6, 2009, DEQ/AQD noted oil storage tank emissions at the Bright Pool and Beaver Hole facilities were not being flared.

9. Pursuant to WYO. STAT. ANN. § 35-11-701, the DEQ/AQD issued a Notice of Violation, Docket No. 4136-07 ("NOV") to Asher on August 14, 2007, alleging in part that Asher failed to comply with the requirements of Permit No. MD-309 by failing to utilize flares to control vapors and emissions from oil storage tanks at its Bright Pool and Beaver Hole facilities.

10. Condition 4 of Permit No. MD-309 requires "That Asher Associates, Inc. shall re-inject all produced gas from both facilities (Bright Pool & Beaver Hole) as stated in the permit application."

11. The DEQ/AQD inspection of June 25, 2007, noted that the produced gas injection compressor had been removed and that produced gas from the Bright Pool and Beaver Hole facilities was being flared.

12. During follow up inspections on November 20, 2008; January 8, 2009, February 9, 2009; March 2, 2009, April 9, 2009; May 26, 2009; June 29, 2009 and August 6, 2009, DEQ/AQD noted that produced gas was flared and was not being re-injected.

13. Pursuant to WYO. STAT. ANN. § 35-11-701, the DEQ/AQD issued a Notice of Violation, Docket No. 4136-07 ("NOV") to Asher on August 14, 2007, alleging in part that Asher failed to comply with the requirements of Permit No. MD-309 by failing to re-inject produced gas from its Bright Pool and Beaver Hole facilities located in Niobrara County, Wyoming.

14. DEQ/AQD noted during its inspection of February 9, 2009, of Asher's Federal 32-20 Injection facility that vapor recovery piping installed on the

400-bbl produced water storage tanks was disconnected. DEQ/AQD identified emissions from these tanks as creating another emission source which had not been permitted or identified in the permit application for Permit No. MD-309. DEQ/AQD alleges this qualifies as a modification to the facility requiring a modification of Asher's air quality permit.

15. Failing to obtain a permit for a modification creating a new emission source is a violation of WYO. STAT. ANN. § 35-11-801(o).

16. 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. Asher, without admitting any of the facts alleged in the NOV or Complaint and without admitting liability or failure to comply with any permit requirements, agrees to pay to DEQ a total of seventy thousand dollars and no cents (\$70,000.00) ("Stipulated Penalty") as a full and complete cash payment to resolve this matter ("Stipulated Penalty Amount") and DEQ/AQD agrees to dismiss with prejudice Claim I (failure to flare Bright Pool oil storage tank emissions) and Claim II (failure to flare Beaver Hole Pool oil storage tank emissions) of the Complaint. Of the total Stipulated Penalty amount: 1) \$45,000

is for resolution of alleged failure to re-inject all produced gas from Asher's Bright Pool and Beaver Hole facilities; and 2) \$25,000.00 is for resolution of alleged failure to obtain a permit modification for emissions from produced water storage tanks at Asher's Federal 32-20 Injection facility.

Asher, without admitting any of the facts alleged in the NOV or Complaint and without admitting liability or failure to comply with any permit requirements, agrees to pay to the DEQ/AQD the Stipulated Penalty in a maximum of three (3) payments which are to be paid on a six month basis. Asher agrees that it shall make the first payment in the amount of ten thousand dollars (\$10,000.00) no later than six (6) months after notice to Asher of entry by the Court of this Consent Decree. Asher agrees that it shall make the second payment in the amount of twenty-five thousand dollars (\$25,000.00) no later than twelve (12) months after such notice to Asher. Asher agrees that it shall make the third payment in the amount of thirty-five thousand dollars (\$35,000.00) no later than eighteen (18) months after such notice to Asher. Asher agrees to make said payments by check, which checks 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. Asher, without admitting any of the facts alleged in the NOV or Complaint and without admitting liability or failure to comply with any permit requirements, in settlement of all claims in the Complaint, also agrees to submit

complete air quality permit applications for the facilities identified in Sections IV. B. 1, 3, and 4, to DEQ/AQD on or before December 31, 2010, except for the Bright Pool sour production wells and processing stream (Section IV. B. 2) for which the deadline for issuance of a DEQ/AQD permit is set forth in Section IV. E below. Asher agrees to submit applications for the following facilities and emission sources:

1. Bright Pool sweet production well and processing stream (Well 41-8 and its related tanks and processing equipment).
2. Bright Pool sour production wells and processing stream (Wells 31-8 and 44-5 and their related tanks, processing equipment and flare).
3. Beaver Hole production wells and processing stream (Wells 24-20, 42-20A, 11-21, 12-21, 22-21, 31-21 and their related tanks, processing equipment and flare).
4. Federal 32-20 Water Injection facility (Well 32-20 and related water storage tanks and processing equipment).

DEQ/AQD and Asher acknowledge that at the time of this agreement, the Beaver Hole production facilities are shut-in. DEQ/AQD and Asher agree that Asher may, flare produced gas from the Beaver Hole wells as the Beaver Hole wells currently shut-in are returned to production to gather and collect the data necessary to prepare a complete permit application. Asher agrees to timely collect oil and gas production data, oil and gas composition data, oil and water storage tank emission data and such other data as is necessary for preparing a complete air

quality permit application as the Beaver Hole wells currently shut-in are returned to production. Asher agrees to provide such data to DEQ/AQD within thirty (30) days of the date each well is returned to production. All emission measurements shall be made in accordance with the DEQ/AQD's Oil and Gas Production Facilities, Chapter 6, Section 2 Permitting Guidance, the WAQSR and the Act. In the event the data collected from a particular well or combination of wells in production or returned to production at the Beaver Hole site indicates emission levels qualifying a particular well or combination of wells as a Title V major source of emissions, Asher shall immediately shut-in the well or wells until properly permitted by the DEQ/AQD or until Asher begins re-injection of the produced gas from the well or wells. In addition, in the event Asher is unable or otherwise fails to submit a complete air quality permit application for the facilities identified in Section IV. B. 3, before December 31, 2010, any unpermitted producing well or wells at the Beaver Hole shall be shut-in. After December 31, 2010, Asher may only resume production of the shut-in Beaver Hole wells after submitting an air quality permit application and issuance of an air quality permit as is allowed and required by the WAQSR and the Act.

C. Complete air quality permit applications shall address all the requirements under Chapter 6, Section 2(c) of the WAQSR and shall include all results of physical measurements and analytical analyses of gas, oil and water samples conducted and collected by Asher after March 1, 2010, results of calculations and modeling, process and instrumentation diagrams for each facility,

and estimates of emissions as well as any other supporting materials Asher may elect to submit. Calculations, modeling and emission estimate shall be made in accordance with standard engineering practices. An application shall be deemed complete by the DEQ/AQD when the application includes 1) all necessary forms which have been filled in completely and correctly; 2) a complete written process description identifying each liquid and gas stream that enters and exits the facility and the processing, storage, sales and emission control equipment within the facility; 3) a facility plot plan identifying and labeling each liquid and gas stream that enters and exits the facility and the processing, storage, sales and emission control equipment within the facility, including flow rates and operating temperatures and pressures of the streams and equipment; 4) the actual and potential emission rates from each individual source of VOC, HAP, NO_x, CO, H₂S and SO₂, emissions at the facility. In the event that after receiving permit applications from Asher, DEQ/AQD requests or requires additional information which is necessary to analyze and process a permit application(s) which, with reasonable diligence, cannot be provided on or before December 31, 2010, the DEQ/AQD and Asher may, by mutual written agreement, extend the December 31, 2010, deadline to accommodate the gathering of the additional information. In the event Asher is unable to file a complete application by December 31, 2010 or any mutually agreed extension, Asher shall shut-in the relevant Facility as identified in Sections IV. B. 1, 2, 3, and 4 of this consent decree.

D. In the event Asher submits complete permit applications as identified and described in Section IV. B and C above, DEQ/AQD agrees to timely process said permit applications. Asher acknowledges that DEQ/AQD may not approve and issue permits in accordance with the applications as submitted but that one or more permits may be approved and issued by DEQ/AQD for the facilities and emission sources identified in Section IV. B and as included in the air quality permit applications. DEQ/AQD agrees to allow Asher to continue oil and gas production and water injection, subject to the restrictions contained in Section IV. B and C., with those controls as are now in place and operating during the period DEQ/AQD reviews, processes and approves one or more permits for the facilities and emission sources identified in Section IV. B. In the event DEQ/AQD approves one or more permits for the facilities and emission sources identified in Section IV. B., Asher shall implement the emission controls specified in said permit or permits within such time as is allowed as specified in the permits or Asher shall cease all emissions for which such controls are specified. In the event DEQ/AQD denies a permit for one or more of the facilities identified in Section IV. B or denies a permit for one or more portions thereof, Asher shall, upon written notice from DEQ/AQD of such denial, cease all emissions from those facilities (or portions thereof) as are denied an air quality permit.

E. In the event a new permit or permits authorizing emissions from the Bright Pool sour production facilities identified in Section IV. B. 2 has not been issued by the DEQ/AQD, within forty five (45) days of the acceptance of this

Consent Decree by the Court, Asher agrees to shut-in the Bright Pool sour production wells, identified in Section IV. B. 2. In the event the Bright Pool sour production is shut-in pursuant to this section, Asher agrees that it shall remain shut-in until such time as Asher is capable of re-injecting the produced gas from said facility or Asher obtains a permit from DEQ/AQD which authorizes another form of emission control, excepting that Asher may produce the wells as allowed by the DEQ/AQD for the purpose of obtaining data necessary to obtain an air quality permit.

V. Release and Covenant not to Sue and Dismissal With Prejudice

A. DEQ/AQD agrees that payment of the Stipulated Penalty Amount and submittal of complete permit applications as specified and described in Section IV and of this Consent Decree shall constitute full satisfaction of the claims against Asher that DEQ/AQD alleged in the Complaint initiating this action or in the NOV.

B. In consideration of the Stipulated Penalty Amount paid by Asher and of Asher's agreement to submit complete permit applications under Section IV of this Consent Decree, DEQ/AQD and the State of Wyoming hereby release and covenant not to sue Asher, 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 Asher as specified in Section IV of this Consent Decree.

D. Within thirty (30) days after the complete and satisfactory performance by Asher 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 Asher, 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 Asher 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. Asher 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, Asher 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 No. MD-309.

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 Asher'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.

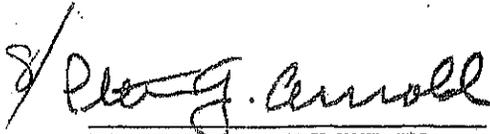
XI. Retention of Jurisdiction

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.

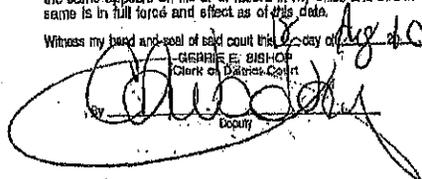
DATED this 17th day of Aug, 2010.


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 17th day of Aug 2010
GERRIE E. BISHOP
Clerk of District Court

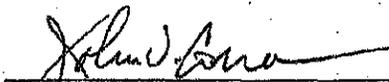


WE HEREBY CONSENT to the entry of this Consent Decree:

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

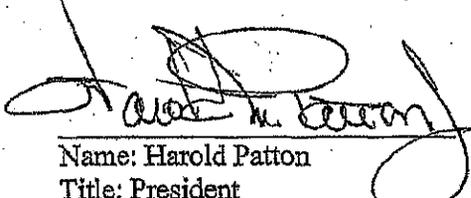

Steven A. Dietrich, Administrator
Air Quality Division

8-11-10
Date


John V. Corra, Director
Department of Environmental Quality

8/11/10
Date

FOR ASHER ASSOCIATES, LLC:


Name: Harold Patton
Title: President

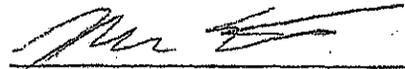
AUG 9, 2010
Date

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

8-11-10
Date

APPROVAL AS TO FORM:



J. Mark Stewart, # 6-4121
Davis & Cannon, LLP
422 W. 26th Street
Cheyenne, Wyoming 82001
(307) 634-3210
Attorney for Asher Associates, LLC

8/9/10
Date