

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

PEOPLE OF THE STATE OF)
WYOMING,)
)
Plaintiff,)
)
v.)
)
EXXON MOBIL CORPORATION,)
a New Jersey corporation,)
)
Defendant.)

Docket No. 176-478
FILED

AUG 16 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 ("Wyoming"), 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 2007), has filed a Complaint against Defendant Exxon Mobil Corporation ("ExxonMobil"), alleging that ExxonMobil failed to comply with permit MD-771 at its Shute Creek Plant ("Facility"), located in Lincoln County, Wyoming, in violation of the Act, the Wyoming Air Quality Standards and Regulations ("WAQSR"), and permit MD-771. DEQ/AQD and ExxonMobil (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) and venue is proper in Laramie County under Section 903(c) of the Act, WYO. STAT. ANN. § 35-11-903(c).

II. Parties

A. ExxonMobil is a New Jersey Corporation and is the owner and operator of the Facility.

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 MD-771 issued to ExxonMobil.

III. Background

A. ExxonMobil

1. ExxonMobil owns and operates the Shute Creek Plant which includes three gas turbines in Lincoln County, Wyoming.

2. ExxonMobil holds DEQ/AQD permit MD-771 relating to the facility.

3. ExxonMobil 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 Construction and Modification Permitting Program and Permit MD-771

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. WYO. STAT. ANN. § 35-11-801 and WAQSR, Ch. 6, § 2.

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.” WYO. STAT. ANN. § 35-11-801(a).

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. WAQSR, Ch. 6, § 2.

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

5. On or about June 19, 2002, the DEQ/AQD issued permit MD-771 to ExxonMobil for a special modification to the Shute Creek Plant, to include the construction of a co-generation facility consisting of three 35.8 MW combined cycle GE Frame 6 combustion turbines.

6. Condition 8 of permit MD-771 establishes the limits for NO_x as 8.0 ppm @ 15% O₂ on a 30-day rolling average, 16.0 lbs/hr on a 30-day rolling average and 70.1 tons per year.

7. Condition 12 of permit MD-771 defines Nitrogen Oxides (“NO_x”) exceedances for these turbines using Continuous Emission Monitoring (“CEM”) equipment as any 30-day rolling average of NO_x emissions which exceeds the parts per million (“ppm”) or pounds per hour (“lbs/hr”) limits established in permit MD-771 or any calendar year average of SO₂ emissions which exceeds the tons per year limit established in permit MD-771.

8. Condition 13 of permit MD-771 requires ExxonMobil to comply with all applicable requirements of the WAQSR, Chapter 5, Section 2, NSPS Subpart GG, “Standards of Performance for Stationary Gas Turbines.”

9. Pursuant to WYO. STAT. ANN. § 35-11-701, the DEQ/AQD issued a Notice of Violation (“NOV”), Docket No. 4147-07 to ExxonMobil on September 21, 2007, alleging in part that ExxonMobil violated the Act, the

WAQSR and permit MD-771, by failing to comply with the permitted NO_x ppm and lbs/hr limits for Turbines A, B, and C at its Shute Creek Plant.

10. 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.

IV. Settlement

A. DEQ/AQD and ExxonMobil agree that the total stipulated settlement amount to resolve the violations alleged in the NOV in lieu of litigation under WYO. STAT. ANN. § 35-11-901(a)(ii) is two million four hundred thousand dollars and no cents (\$2,400,000.00) payable as follows:

1. ExxonMobil agrees to pay the DEQ/AQD one million three hundred thousand dollars and no cents (\$1,300,000.00) as a partial penalty amount ("Partial Penalty Amount"). ExxonMobil shall make full payment of the Partial Penalty Amount by check made payable to the Wyoming Department of Environmental Quality, Air Quality Division, within thirty (30) days after the entry of the Consent Decree. ExxonMobil shall mail the payment to John S. Burbridge, Senior Assistant Attorney General, 123 Capitol Building, Cheyenne, WY 82002.

2. In lieu of paying the one million one hundred thousand dollars and no cents (\$1,100,000.00) ("SEP Expenditure Amount") balance remaining ("Settlement Balance Amount") after payment of the Partial Penalty Amount, ExxonMobil agrees to complete the following Supplemental Environmental Project ("SEP"):

a. ExxonMobil will submit one or more SEP proposals for the DEQ/AQD's approval within ninety (90) days of the effective date of this Consent Decree. If the Parties are unable to

agree upon a SEP within one hundred eighty (180) days of the effective date of the Consent Decree, ExxonMobil will pay the SEP Expenditure Amount within forty five (45) days in a manner consistent with paragraph IV(A)(ii)(b) below.

b. ExxonMobil shall complete the SEP by no later than the date agreed to in the approved SEP as set forth in paragraph IV(A)(ii)(a) unless ExxonMobil and the DEQ/AQD mutually agree to an extension of time. ExxonMobil shall submit a SEP Completion Report to the DEQ/AQD, Attn: Mr. Robert Gill, 122 West 25th Street, Cheyenne, WY 82002 within thirty (30) days after the completion of the SEP. The SEP Completion Report shall describe the completed SEP, include itemized costs and receipts, and certify that the SEP has been fully implemented pursuant to the provisions of this Consent Decree. The DEQ/AQD and ExxonMobil agree that if ExxonMobil does not complete the SEP by the SEP deadline, then ExxonMobil will pay the DEQ/AQD the amount equaling the difference between the SEP Expenditure and the amount actually spent as demonstrated by itemized costs and receipts by the SEP Completion Report deadline. The DEQ/AQD and ExxonMobil agree that if the amount ExxonMobil actually spends in performance of the SEP is less than the SEP Expenditure Amount, then ExxonMobil will pay the DEQ/AQD a prorated amount calculated by taking the SEP Expenditure Amount and subtracting the amount ExxonMobil actually spent on the SEP no later than thirty (30) days after submitting the SEP Completion Report to the DEQ/AQD. If required, ExxonMobil shall make the payment of the remaining SEP Expenditure Amount, by check made payable to the Wyoming Department of Environmental Quality, Air Quality Division, within thirty (30) days of the SEP Completion Report deadline.

ExxonMobil shall mail the payment to John S. Burbridge, Senior Assistant Attorney General, 123 Capitol Building, Cheyenne, WY 82002.

c. ExxonMobil hereby certifies that as of the date it signs this Consent Decree, ExxonMobil is not required to perform or develop a SEP by any federal, state or local law or regulation; nor is ExxonMobil required to perform or develop a SEP pursuant to any other agreement or relief in any other case. ExxonMobil further certifies that it has not received and is not presently negotiating to receive credit for a SEP in any other pending action.

B. ExxonMobil shall complete installation, commissioning and debugging of SCR emission controls which meet the requirements of paragraph IV(D) and have the SCR emission controls for the three GE Frame 6 combustion turbines fully operational by no later than June 30, 2012.

C. Between the Date of Entry of this Consent Decree and June 30, 2011, ExxonMobil shall comply at all times with interim NO_x emission limits for each GE Frame 6 combustion turbine as follows: NO_x ppm limit of 19.0 ppm at 15% O₂, 30-day rolling average; NO_x pound per hour limit of 20.0 pounds per hour, 30-day rolling average; and a NO_x ton per year limit of 70.1 tons. ExxonMobil shall comply with NO_x limits for its GE Frame 6 combustion turbines as set forth in this Consent Decree in lieu of the limits specified in Condition 8 of permit MD-771. ExxonMobil shall comply with the NO_x excess emission limits reporting required for the GE frame 6 combustion turbines in Condition 12 of permit MD-771 using ppm and lb/hr NO_x emission limits specified in this Consent Decree in lieu of the limits set forth in Condition 8 of permit MD-771. ExxonMobil shall continue to comply with all other requirements of permit MD-771, including compliance with Condition 13 NSPS subpart GG. Between June 30, 2011 and June 30, 2012, ExxonMobil shall meet the NO_x emission limitations set forth in Conditions 8 and 12 of permit MD-771

that were in effect prior to entry of this Consent Decree. For purposes of this Consent Decree, the interim limits in this paragraph shall apply during all operating periods.

D. After June 30, 2012, ExxonMobil shall comply at all times with final emission limits for each GE Frame 6 combustion turbine as follows: NO_x ppm limit of 6.5 ppm at 15% O₂, annual rolling average period; NO_x pound per hour limit of 9.7 pounds per hour, annual rolling average period; NO_x ton per year limit of 42.5 tons per year, calendar year limit; NH₃ (ammonia) limit of 10.0 ppm on a 24-hour rolling average; NH₃ pound per hour of 7.2 pounds per hour on a 24-hour rolling average; and NH₃ tons per year limit of 31.5 tons per year, calendar year limit, as measured by continuous emission monitoring systems. ExxonMobil shall comply with NO_x limits for its GE Frame 6 combustion turbines as set forth in this Consent Decree in lieu of the limits specified in Condition 8 of permit MD-771. ExxonMobil shall comply with the NO_x excess emission limits reporting required for the GE frame 6 combustion turbines in Condition 12 of permit MD-771 using ppm and lb/hr NO_x emission limits specified in this Consent Decree in lieu of the limits set forth in Condition 8 of permit MD-771. ExxonMobil shall comply with all other requirements in permit MD-771. Additionally, ExxonMobil shall comply with all applicable Chapter 5, Section 2, NSPS Subpart GG requirements. For purposes of this Consent Decree and the permitting required under paragraph IV(F), these limits shall apply during all operating periods.

E. By no later than June 30, 2012, ExxonMobil shall install and certify a continuous emission monitoring system for measuring NH₃ (ammonia) emissions from each of the GE Frame 6 combustion turbines.

F. By no later than December 31, 2011, ExxonMobil shall submit a permit application under Chapter 6, Section 2 of the WAQSR to recognize operation of the GE Frame 6 combustion turbines with SCR emission controls and to incorporate all final emission limits and monitoring requirements identified in

paragraph IV(D) and paragraph IV(E) above into a state issued construction permit.

G. ExxonMobil shall submit a letter to the DEQ/AQD no later than thirty (30) days after entry of this Consent Decree requesting to rescind permit application AP-4001.

H. Before a delay in performance of a requirement of the Consent Decree occurs, ExxonMobil may request from the DEQ/AQD, in writing, additional time to achieve compliance with the specific Consent Decree requirements, and the DEQ/AQD may, in its discretion, grant additional time if it determines the delay in performance is the result of circumstances beyond the control of ExxonMobil.

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

A. DEQ/AQD agrees that payment of the Partial Penalty Amount as specified in Section IV(A) and completion of the requirements as specified in sections IV(B) through IV(H) of this Consent Decree shall constitute full satisfaction of the claims against ExxonMobil that Wyoming alleged in the Complaint initiating this action or in DEQ/AQD NOV, Docket No. 4147-07, up to the filing or lodging of the Consent Decree.

B. In consideration of the Partial Penalty Amount paid by ExxonMobil under Section IV(A) and completion of the requirements as specified in Sections IV(B) through IV(H) of this Consent Decree, DEQ/AQD and the State of Wyoming hereby release and covenant not to sue ExxonMobil, 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 in the NOV, Docket No. 4147-07.

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

D. Within thirty (30) days after the complete and satisfactory performance by ExxonMobil 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 ExxonMobil, 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 ExxonMobil of its duty to comply with the Act, WAQSR, Wyoming's SIP, the federal Clean Air Act, and the regulations and standards adopted thereunder including any permit requirements.

D. ExxonMobil 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, ExxonMobil neither admits nor denies that it violated any provision of the Act, the WAQSR, Wyoming's SIP, the federal Clean Air Act, or permits issued pursuant to such authority including permit MD-771.

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 laws, 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 ExxonMobil'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.

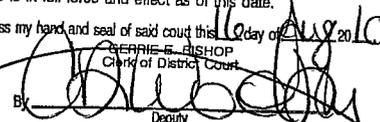
XII. Authority

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

DATED this 16 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.

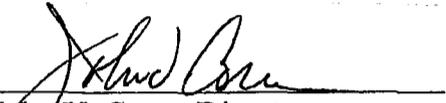
Witness my hand and seal of said court this 16 day of Aug, 2010
GERRIE E. BISHOP
Clerk of District Court
By 
Deputy

WE HEREBY CONSENT to the entry of this Consent Decree:

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

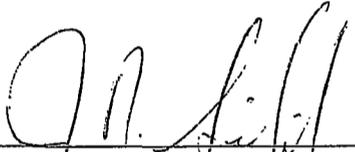

Steven A. Dietrich, Administrator
Air Quality Division

8-11-10
Date


John V. Corra, Director
Department of Environmental Quality

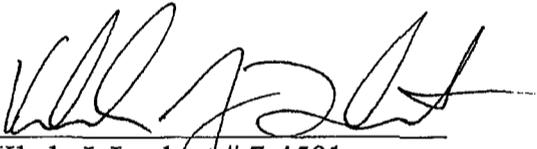
8/11/10
Date

FOR EXXONMOBIL CORPORATION:


James D. Siegfried
Operations Manager *MC 8/4/10*

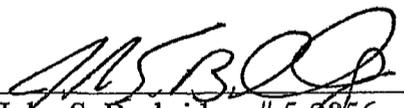
8/9/2010
Date

APPROVAL AS TO FORM:


Khale J. Lenhart # 7-4581
Holland & Hart, LLP
2515 Warren Avenue, Suite 450
P.O. Box 1347
Cheyenne, Wyoming 82003-1347
Attorney for ExxonMobil

8/3/2010
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 Wyoming

8.11.10
Date