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WYOMING ATTORNEY GENERAL OFFICE, WNR

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

PEOPLE OF THE STATE OF )  
WYOMING, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
M-I, L.L.C., a Delaware Limited )  
Liability Company, )  
 )  
Defendant. )

Docket No. 177-623

FILED

FEB 23 2011

CONSENT DECREE SANDY LANDERS  
CLERK OF THE DISTRICT COURT

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 2010), has filed a Complaint against Defendant M-I, L.L.C., a Delaware Limited Liability Company, alleging that M-I, L.L.C. failed to comply with certain permit conditions and air quality regulations at its Bentonite Processing Plant Facility ("Facility"), located in Big Horn County, Wyoming, in violation of the Act, the Wyoming Air Quality Standards and Regulations ("WAQSR"), condition 10 of Permit MD-658. DEQ/AQD and M-I, L.L.C. (collectively referred to hereinafter as "Parties"), 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, have agreed to the following terms for resolving this litigation prior to trial, before the taking of evidence, without 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:

JA

### 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. M-I, L.L.C., is a Delaware Limited Liability Company and is the owner and operator of the Facility located in Big Horn County, Wyoming.

B. 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 Permit MD-658.

### III. Background

#### A. M-I, L.L.C.

1. M-I, L.L.C. owns and operates the Facility located in Big Horn County, Wyoming.

2. M-I, L.L.C. 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).

3. M-I, L.L.C. holds various DEQ/AQD permits relating to the Facility, including Permit MD-658.

#### B. DEQ Construction Permit MD-658

1. The Act establishes a statutory scheme which is designed in part to enable the State of Wyoming to prevent, reduce and eliminate pollution; to preserve and enhance the State of Wyoming's air, water and land resources; and, to allow the State of Wyoming to plan the development, use, reclamation and enhancement of its air, land and water resources. WYO. STAT. ANN. § 35-11-102.

2. Wyoming's construction permit program requires 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. WYO. STAT. ANN. § 35-11-801: WAQSR Ch. 6, § 2.

3. WYO. STAT. ANN. § 35-11-801(a) provides in pertinent part, "[i]n granting permits, the [DEQ] director may impose such conditions as may be necessary to accomplish the purpose of this act [Wyoming's Environmental Quality Act] which are not inconsistent with the existing rules, regulations and standards."

4. 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.

5. 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.

6. On August 21, 2001, the DEQ/AQD issued Permit MD-658 to M-I, L.L.C. for the Facility.

7. Condition 10 of Permit MD-658 sets the particulate emission limit for the ESP Stack (Unit 2) at 0.02 grams per dry standard cubic foot (gr/dscf) and 12.2 pounds per hour (lb/hr).

C. DEQ Notice of Violation Docket No. 4628-10 (NOV)

1. On or about September 16, 2009, M-I, L.L.C. conducted stack testing for the ESP Stack (Unit 2), the results of which indicated that PM was being emitted at the rate of 0.044 gr/dscf and 24.83 lb/hr.

2. On or about November 20, 2009, M-I, L.L.C. re-tested the ESP Stack (Unit 2), the results of which indicated that PM was being emitted at the rate of 0.035 gr/dscf and 17.33 lb/hr.

3. On or about September 22, 2010, M-I, L.L.C. retested the ESP Stack (Unit 2), the results of which indicated that PM emissions were within permitted limits.

4. Based on the results of the DEQ/AQD's review, and on information and belief, Wyoming alleges that M-I, L.L.C. violated the Act, the WAQSR, and Condition 10 of Permit MD-658, by failing to comply with the PM emission limit for the

Facility's ESP Stack (Unit 2) for the period from September 16, 2009 through September 22, 2010.

5. Pursuant to WYO. STAT. ANN. § 35-11-701, the DEQ/AQD issued Notice of Violation Docket No. 4628-10 (NOV ) to M-I, L.L.C. on January 29, 2010, alleging in part that M-I, L.L.C. violated the Act, the WAQSR, and Permit MD-658 by failing to comply with the PM emission limit for the Facility's ESP Stack (Unit 2).

6. 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 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 M-I, L.L.C. of entry by the Court of this Consent Decree, M-I, L.L.C., 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 sum of ninety nine thousand dollars and no cents (\$99,000.00) (Stipulated Civil Penalty) as a full and complete cash payment to resolve this matter. The check shall be made payable to the Department of Environmental Quality and shall be delivered to Nancy Vehr, Sr. Asst. Attorney General, Wyoming Attorney General's Office, 123 Capitol Building, Cheyenne, WY 82002.

B. Payment of the Stipulated Civil Penalty shall constitute full satisfaction of M-I, L.L.C.'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 of this Consent Decree shall constitute full satisfaction of the claims against M-I, L.L.C. that Wyoming alleged in the Complaint initiating this action or in the NOV.

B. In consideration of M-I, L.L.C.'s payment of the Stipulated Civil Penalty, the DEQ/AQD and the State of Wyoming hereby release and covenant not to sue M-I, L.L.C., 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 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 M-1, L.L.C. as specified in Section IV of this Consent Decree.

D. Within thirty (30) days after the complete and satisfactory performance by M-1, L.L.C. 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 V shall survive the termination of the Consent Decree.

#### VI. Parties Bound

A. This Consent Decree shall apply to, and be binding upon M-1, L.L.C., 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 M-1, L.L.C. of its duty to comply with the Act, the WAQSR, Wyoming's SIP, the federal Clean Air Act, and any rules, 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. M-1, L.L.C. 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, are not severable.

**VIII. Reservation of Rights**

A. By signing this Consent Decree, M-I, L.L.C. does not admit 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. By entering into this Consent Decree, M-I, L.L.C. does not admit or deny the validity of any allegation contained in the NOV or the Complaint.

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 M-I, L.L.C.'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.

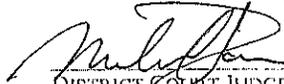
**XI. Retention of Jurisdiction**

A. This 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

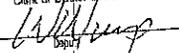
The signatories certify that they are duly authorized to bind their respective Parties to this Consent Decree.

DATED this 22<sup>nd</sup> day of February, 2011.

  
DISTRICT COURT JUDGE

STATE OF WYOMING COUNTY OF LARAMIE, SS CHEYENNE:  
I Sandy Landers, Clerk of the District Court - and for the County of Laramie, Wyoming, do hereby certify that the within and foregoing is a true and correct copy of the original thereof as the same appears on the 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 23 day of Feb, 2011  
SANDY LANDERS  
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  
Steven A. Dietrich, Administrator  
Air Quality Division

2-10-11  
Date

John C. Coon  
John Coon, Director  
Department of Environmental Quality

2/16/11  
Date

FOR M-I, L.L.C.:

J. Timothy Fagley  
J. Timothy Fagley  
Manager District/Operations Sr

2/03/11  
Date

Clerk of District Court certifies copies were distributed on 2-23-11 to:

APPROVAL AS TO FORM:

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Attorney for DEQ/AQD

2/8/2011  
Date

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2/7/11  
Date