

COPY

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

PEOPLE OF THE STATE OF)
WYOMING,)
)
Plaintiff,)
)
v.)
)
SINCLAIR CASPER REFINING)
COMPANY, a Wyoming corporation,)
)
Defendant.)

Docket No. 177-667

FILED
MAR 14 2011

SANDY LANDERS
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 2010), has filed a Complaint against Defendant Sinclair Casper Refining Company, a Wyoming corporation ("Sinclair"), alleging that Sinclair failed to comply with certain conditions of Permit MD-189 and Waiver WV-8629 at the Sinclair Casper Refinery facility ("Facility") located in Natrona County, Wyoming. DEQ/AQD and Sinclair (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 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:

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. Sinclair is a Wyoming corporation and is the owner and operator of the Facility located in Natrona 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-189 and Waiver WV-8629.

III. Background

A. Sinclair

1. Sinclair owns and operates the Facility located in Natrona County, Wyoming.

2. Sinclair 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. Sinclair holds various DEQ/AQD permits relating to the Facility, including Permit MD-189 and Waiver WV-8629.

B. DEQ Permit MD-189 and Waiver WV-8629

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 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. Chapter 6, Section 2(k)(viii) provides that permitting requirements may be waived for minor sources determined to be insignificant in both emission rate and ambient air quality impact.

7. On April 1, 1993, the DEQ/AQD issued Permit MD-189 to Sinclair for the Facility.

8. Condition 6 and Table I of Permit MD-189 limit particulate matter ("PM") emissions from the Facility's fluidized catalytic cracking unit ("FCCU") to 7.58 pounds per hour ("lb/hr") and 33.2 tons per year ("TPY").

9. On December 17, 2008, the DEQ/AQD issued Waiver WV-8629 to Sinclair for the Facility.

10. Condition 3 of Waiver WV-8629 limits the annual operating hours of the Facility's portable emergency air compressor equipped with a 540 hp Caterpillar C-15 ATAAC diesel generator ("Generator") to 500 hours of operation per year.

C. DEQ Notice of Violation Docket No. 4742-10("NOV I")

1. On or about August 20, 2009, Sinclair conducted PM emissions testing of the FCCU regeneration stack, the results of which indicated that PM was being emitted at a rate of 8.12 lb/hr.

2. On or about July 20, 2010, Sinclair retested the FCCU regeneration stack's PM emissions, the results of which indicated that PM emission were within permitted limits.

3. Based on the results of the DEQ/AQD's review of Sinclair's stack test report, and upon information and belief, the DEQ/AQD alleges that Sinclair violated the Act, the WAQSR, and Permit MD-189 by failing to comply with the Facility's PM emission limit established by Condition 6 and Table I of Permit MD-189 from on or about August 20, 2009 through July 20, 2010.

4. Pursuant to WYO. STAT. ANN. § 35-11-701, the DEQ/AQD issued Notice of Violation Docket No. 4742-10 ("NOV I") to Sinclair on September 30, 2010, alleging in part that Sinclair violated the Act, the WAQSR and Permit MD-189 by failing to comply with the PM emission limits for the Facility's FCCU regeneration stack.

D. DEQ Notice of Violation Docket No. 4744-10 ("NOV II")

1. On or about May 6, 2010, the DEQ/AQD inspected the Facility and noted that the meter for the Generator showed 1,082.9 hours of operation.

2. On or about August 31, 2010, the DEQ/AQD inspected the Facility and noted that the meter for the Generator showed 1,190.4 hours of operation.

3. Pursuant to WYO. STAT. ANN. § 35-11-701, the DEQ/AQD issued Notice of Violation Docket No. 4744-10 ("NOV II") to Sinclair on October 4, 2010, alleging in part that Sinclair violated the Act, the WAQSR and Waiver WV-8629 by failing to operate the Generator as represented in the permit application.

E. WYO. STAT. ANN. § 35-11-901(a)

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 Sinclair of entry by the Court of this Consent Decree, Sinclair, without admitting any of the facts alleged in NOV I, NOV II or the Complaint and without admitting liability or failure to comply with any permit requirements, agrees to pay to the DEQ/AQD the sum of twenty-two thousand five hundred dollars and no cents (\$22,500.00) (“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 Sinclair’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 Sinclair that Wyoming alleged in the Complaint initiating this action or in NOVs I or II.

B. In consideration of Sinclair’s payment of the Stipulated Civil Penalty, the DEQ/AQD and the State of Wyoming hereby release and covenant not to sue Sinclair, 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 NOVs I or II on the basis of knowledge DEQ/AQD actually had at the time of issuing NOVs I or II.

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

D. Within thirty (30) days after the complete and satisfactory performance by Sinclair 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 as 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 Sinclair, 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 Sinclair 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. Sinclair 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, Sinclair 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 this Consent Decree, Sinclair does not admit or deny the validity of any allegation contained in NOV's I or II 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

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

X. Attorney's Fees/Costs of Action

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

XI. Retention of Jurisdiction

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.

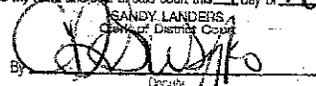
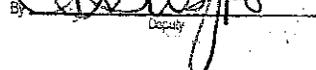
DATED this 10th day of March, 2011.


DISTRICT COURT JUDGE

STATE OF WYOMING COUNTY OF LARAMIE, SS CHEYENNE

I Sandy Landers, 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 14 day of March, 2011


SANDY LANDERS
Clerk of District Court
By 
Deputy

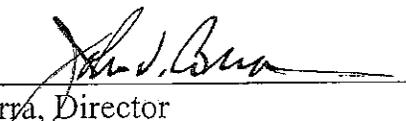
WE HEREBY CONSENT to the entry of this Consent Decree:

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:



Steven A. Dietrich, Administrator
Air Quality Division

2-15-11
Date



John Corra, Director
Department of Environmental Quality

2/21/11
Date

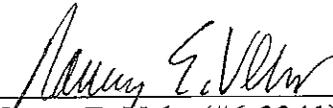
FOR SINCLAIR CASPER REFINING COMPANY:



Mike Achacoso
President

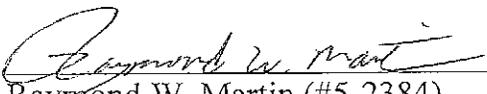
2.7.11
Date

APPROVAL AS TO FORM:



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Attorney for DEQ/AQD

1/24/2011
Date



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P.O. Box 328
Cheyenne, WY 82003-0328
(307) 632-6421
Attorney for Sinclair Casper Refining Co.

1/26/2011
Date

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of March, 2011, a true copy of the foregoing *Consent Decree* was mailed, postage prepaid to the following:

Raymond W. Martin (Court Box)
Sundahl, Powers, Kapp & Martin, LLC
P.O. Box 328
Cheyenne, WY 82003-0328

Wyoming Attorney General's Office
Attn: Nancy E. Vehr
123 Capitol Building
Cheyenne, WY 82002

Sandy Hamden

CLERK OF DISTRICT COURT

[Signature]
Deputy Clerk District Court