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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.)
)
FMC WYOMING CORPORATION,)
a Delaware corporation,)
)
Defendant.)

Docket No. 178-303

FILED

JUL 06 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), has filed a Complaint against Defendant FMC Wyoming Corporation, a Delaware corporation (FMC), alleging that FMC failed to comply with a certain permit condition and air quality regulations at its Westvaco facility (Facility), located in Sweetwater County, Wyoming, in violation of the Act, the Wyoming Air Quality Standards and Regulations (WAQSR), and condition 3 of Permit CT-1045. DEQ/AQD and FMC (collectively referred to hereinafter as Parties) agree, and the Court by entering this Consent Decree finds, that this Consent Decree has been negotiated by the Parties at arm's-length and in good faith, 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:

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. FMC is a Delaware corporation and 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 is the agency of Wyoming state government responsible for enforcing the Act, the WAQSR, and permits issued pursuant to those provisions including Permit CT-1045.

III. Background

A. FMC

1. FMC is the owner and operator of the Facility located in Sweetwater County, Wyoming.

2. FMC holds various DEQ/AQD permits relating to the Facility, including Permit CT-1045.

B. DEQ Construction Permit CT-1045

1. The Act establishes a statutory scheme which is designed in part to enable the State of Wyoming to prevent, reduce, and eliminate air pollution, and to preserve and enhance the State of Wyoming's air. WYO. STAT. ANN. § 35-11-102.

2. Wyoming's construction permit program requires persons to 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 which are not inconsistent with the existing rules, regulations and standards.”

4. Chapter 6 Section 2 of the WAQSR prescribes the procedures for issuing permits to sources under DEQ/AQD’s construction and modification permitting program.

5. 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.

6. On September 7, 1993, DEQ/AQD issued Permit CT-1045 to FMC for construction of a processing plant to utilize the sodium carbonate content of alkali water from the underground mine. Emission limits for equipment associated with this processing plant are included in permit CT-1045.

7. Condition 3 of Permit CT-1045 sets the particulate matter emission limit for the NS-1A Mono Powerhouse Coal Boiler #1 (NS-1A Boiler) at 45.0 pounds per hour (lb/hr).

C. DEQ Notice of Violation Docket No. 4814-11

1. On or about August 17, 2010, FMC conducted a stack test to determine the particulate matter emission rate for the NS-1A Boiler at the Facility. DEQ/AQD’s review of the stack test report indicated that the NS-1A Boiler was operating with a particulate matter emission rate of 66.04 lb/hr at the time of the test, which exceeded the permitted emission limit of 45 lb/hr.

2. On or about October 22, 2010, FMC retested the NS-1A Boiler and the results of the retest showed a particulate matter emission rate of 22.8 lb/hr, in compliance with the permitted emission rate of 45 lb/hr.

3. Based on the results of DEQ/AQD’s review, and on information and belief, DEQ/AQD alleges that FMC violated the Act, the WAQSR, and condition No. 3

of Permit CT-1045 by failing to comply with the permitted particulate matter emission rate for the NS-1A Boiler at the Facility.

4. Pursuant to WYO. STAT. ANN. § 35-11-701, the DEQ/AQD issued Notice of Violation Docket No. 4814-11 (NOV) to FMC on February 24, 2011, alleging in part that FMC violated the Act, the WAQSR, and Permit CT-1045 by failing to comply with the particulate matter emission limit for the Facility's NS-1A Boiler.

5. 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 a 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 FMC of entry by the Court of this Consent Decree, FMC, 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/AQD the sum of eighteen thousand dollars and no cents (\$18,000.00) (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 Jeremiah I. Williamson, Assistant Attorney General, Wyoming Office of the Attorney General, 123 Capitol Building, Cheyenne, Wyoming 82002.

B. Payment of the Stipulated Civil Penalty shall constitute full satisfaction of FMC'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 FMC that Wyoming alleged in the Complaint initiating this action and in the NOV.

B. In consideration of FMC's payment of the Stipulated Civil Penalty, DEQ/AQD and the State of Wyoming hereby release and covenant not to sue FMC, its

respective successors, assigns, affiliates, parents, officers, directors, employees, and representatives, for 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 FMC as specified in Section IV of this Consent Decree.

D. Within thirty (30) days after the complete and satisfactory performance by FMC of the terms of this Consent Decree, 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 FMC, its successors and assigns and upon 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 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 FMC of its duty to comply with the Act, the WAQSR, Wyoming's SIP approved by the U.S. Environmental Protection Agency, 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. FMC 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, FMC 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.

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 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 DEQ/AQD's filing of written notice to the Court confirming the completion of FMC'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

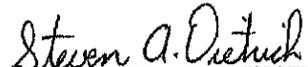
The signatories certify that they are duly authorized to bind their respective Parties to this Consent Decree.

DATED this 5 day of July, 2011.

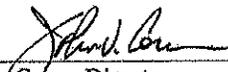

DISTRICT COURT JUDGE

WE HEREBY CONSENT to the entry of this Consent Decree:

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:


Steven A. Dietrich, Administrator
Air Quality Division

5-31-11
Date


John Corra, Director
Department of Environmental Quality

5/31/11
Date

FOR FMC WYOMING CORPORATION:


James Pearce
Resident Manager

5/18/2011
Date

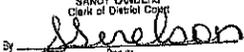
APPROVAL AS TO FORM:


Jeremiah I. Williamson (Wyo. Bar No. 7-4748)
Attorney General's Office
123 Capitol Building
Cheyenne, Wyoming 82002
Phone: (307) 777-6946
Attorney for DEQ/AQD

April 26, 2011
Date


Mark R. Ruppert, P.C. (Wyo. Bar No. 6-3593)
Holland & Hart, LLP
2515 Warren Avenue, Suite 450
Cheyenne, Wyoming 82001
Phone: (307) 778-4267
Attorney for FMC Wyoming Corporation

Apr. 27, 2011
Date

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 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. 7 2011
Witness my hand and seal of said court this 26 day of July 2011
SANDY LANDERS
Clerk of District Court
By 
Deputy

CERTIFICATE OF SERVICE

I hereby certify that on the 10 day of July, 2011, a true and correct copy of the foregoing *Consent Decree* was mailed, postage prepaid to the following persons:

Jeremiah I. Williamson
Attorney General's Office (M)
123 Capitol Building
Cheyenne, WY 82002

Mark R. Ruppert (M)
Holland & Hart, LLP
P.O. Box 1347
Cheyenne, WY 82003-1347

Sandy Sanders
Clerk of District Court
S. S. Erbe
Deputy Clerk District Court