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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. 179-936

**FILED**

JUL 20 2012

SANDY LANDERS  
CLERK OF THE DISTRICT COURT

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**CONSENT DECREE**

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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 2007), has filed a Complaint against Defendant FMC Wyoming Corporation, a Delaware corporation (FMC), alleging that FMC failed to comply with a certain condition of permit OP-265 at FMC's Westvaco facility (Facility) located in Sweetwater County, Wyoming. DEQ/AQD and FMC (collectively referred to hereinafter as "Parties") state, and the Court by entering this Consent Decree finds, that the Parties negotiated this Consent Decree at arm's length and in good faith to 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 the owner and operator of the Facility located in Sweetwater 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 OP-265.

**III. Background**

A. FMC

1. FMC owns and operates the Facility located in Sweetwater County, Wyoming.

2. FMC is a “person” as defined in Wyo. Stat. Ann. § 35-11-103(a)(vi) and WAQSR, Ch. 1 § 3(a).

3. FMC holds various DEQ/AQD permits relating to the Facility, including permit OP-265.

B. DEQ Permit OP-265

1. The Act establishes a statutory scheme 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. The DEQ director may impose permit “conditions as may be necessary to accomplish the purpose of [the Wyoming Environmental Quality Act] which

are not inconsistent with the existing rules, regulations and standards.” Wyo. Stat. Ann. § 35-11-801(a).

3. “Facilities or sources not subject to the provisions of Chapter 6, Section 3 of these regulations shall obtain a Chapter 6, Section 2 operating permit from the Department, pursuant to this section, for operation after a 120-day start-up period.” WAQSR Ch. 6, § 2(a)(iii).

4. The Facility was not subject to the provisions of Chapter 6, Section 3 of the WAQSR when DEQ/AQD issued permit OP-265 to FMC for the Facility on October 25, 1996.

5. The DEQ/AQD may, “impose any reasonable conditions upon an approval to . . . operate[.]” WAQSR Ch. 6, § 2(f).

6. Condition 3 and Table 1 of permit OP-265 limit the allowable particulate matter emissions to 53.0 pounds per hour (pph or lbs/hr) from the Mono-5 gas-fired Calciner.

C. DEQ Notice of Violation Docket No. 4932-11 (Notice of Violation)

1. Pursuant to Wyo. Stat. Ann. § 35-11-701, the DEQ/AQD issued Notice of Violation Docket No. 4932-11 (Notice of Violation) to FMC on December 8, 2011, alleging in part that FMC violated the Act, the WAQSR and permit OP-265 by failing to comply with the lbs/hr PM emission limit for the Mono-5 Calciner.

2. 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 FMC of entry by the Court of this Consent Decree, FMC, without admitting any of the facts alleged in the Notice of Violation or the Complaint and without admitting liability or failure to comply with any permit or waiver requirements, agrees to pay to the DEQ/AQD the sum of thirteen

thousand dollars and no cents (\$13,000.00) (Stipulated Civil Penalty) as a full and complete cash payment to resolve this matter. FMC shall make the check or certified funds payable to the Department of Environmental Quality and shall deliver payment 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 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 or in the Notice of Violation.

B. In consideration of FMC's payment of the Stipulated Civil Penalty, the 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, as to any common law claims, statutory claims, or other claims or causes of action arising out of the facts, transactions, or events alleged in the Complaint initiating this action or in the Notice of Violation on the basis of knowledge DEQ/AQD actually had at the time of issuing the Notice of Violation.

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, the DEQ/AQD shall request that the Court terminate this Consent Decree and dismiss this action with prejudice as to all claims 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 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 only 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, 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. 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 or waivers issued pursuant to such authority. By entering this Consent Decree, FMC does not admit or deny the validity of any allegation contained in the Notice of Violation 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. In the event that DEQ/AQD prevails in an action to enforce this Consent Decree, FMC shall bear

DEQ/AQD's costs and fees. In all other cases, each party shall bear its own costs, fees, and expenses.

**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 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**

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 19<sup>th</sup> day of July, 2012.

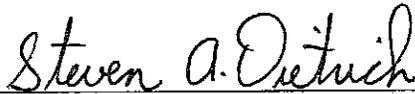
s/ *Peter G. Arnold*  
DISTRICT COURT JUDGE

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 20 day of July, 2012.  
SANDY LANDERS  
Clerk of District Court

By *[Signature]*

WE HEREBY CONSENT to the entry of this Consent Decree:

FOR THE WYOMING DEPARTMENT OF ENVIRONMENTAL QUALITY:

  
\_\_\_\_\_  
Steven A. Dietrich, Administrator  
Air Quality Division

7-5-12  
Date

  
\_\_\_\_\_  
John Corra, Director  
Department of Environmental Quality

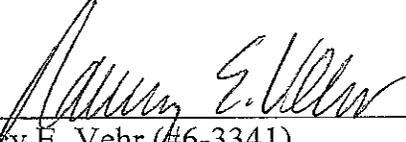
7-6-12  
Date

FOR FMC WYOMING CORPORATION:

By:   
\_\_\_\_\_  
Fred Von Ahrens  
Manufacturing Director/Resident Manager

6/25/12  
Date

APPROVAL AS TO FORM:

  
\_\_\_\_\_  
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Attorney for DEQ/AQD

6/13/2012  
Date

  
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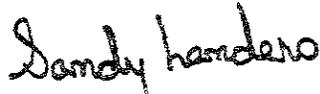
14 June 2012  
Date

**CERTIFICATE OF SERVICE**

I hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, 2012, a true copy of the foregoing *Consent Decree* was mailed, postage prepaid to the following:

Mark R. Ruppert, P.C.  
Holland & Hart, LLP  
PO Box 1347  
Cheyenne, WY 82003-1347

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



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CLERK OF DISTRICT COURT



Deputy Clerk District Court